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SYSTEM

OF THE

FORMS OF DEEDS

USED IN SCOTLAND.

Br ROBERT BELL,

CLERK TO THE SIGNET

LECTURER ON CONVEYANCING, APPOINTED BY THE SOCIETY OF CLERKS TO THE SIGNET.

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1797.

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I offer this Collection to the Public, not only because I conceive a Collection of Styles to be wanting, but that I may have modern forms to which I can refer, arranged in the order of my Lectures.

The principal collections of styles are those of Dallas and of Spottiswood, the Supplement to Spottiswood, and the Juridical Styles. The first of these collections has now, by the lapse of a century and a half, lost much of its value: the forms have become obsolete, even of those deeds which remain in practice; while many of them have entirely disappeared, from the improved state of the law, and from the removal of many of those difficulties which it was then the anxious endeavour of the Conveyancer to overcome. Dallas's collection must ever indeed continue to preserve that place in the library of the Lawyer which it has long held, as a commentary on

the text of our older law, and as a record, illustrating the history and progress of our Conveyancing. But with a view to practice, it has served the purposes of its day, and can no longer be considered as a guide to the Conveyancer.

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The styles collected by Spottiswood are not only, like Dallas's, obsolete, but the collection is desective, as well from the want of a sufficient number of examples, as from the impersed arrangement that has been followed. The supplement to this book (which contains the more important deeds), as it was compiled previous to the abolition of wardholding, contains many things that must consound and perplex a student, and which are of no service to the Conveyancer of the present day; and even during the time that has elapsed since its publication, the manner of expressing our deeds has undergone a very considerable change.

The Juridical Collection, then, is the only one of value in practice. It owes its origin to an inflitution which cannot be fufficiently prized by the student; and surely it can be no matter of reproach, that a work collected at different times, and arranged by different persons, should be liable to defects in its plan, or that some inaccuracies and

omissions should appear in the execution of the work.

In this state of matters, a Collection of Modern Styles was naturally to be looked for; and I have presumed to offer myself for this task. My situation perhaps calls upon me; but I have an additional inducement, since I find it necessary, in order to leave room for other matters in my Lectures, that I should have a Collection arranged in the same order, and accompanied with such hints of the history of the deed, as may render it in many cases unnecessary to consume time on that part of my subject, and so allow me to give the whole course to practical views, and to that information which the Conveyancer will require when he enters into business.

The arrangement which I have chosen, will, I trust, be found sufficiently systematical, calculated to explain that chain of connection which runs through the whole body of Conveyancing, at the same time that the order of practice is strictly attended to, and the manner pointed out in which one deed rises out of another.

In Dallas, there are examples of arrangements according to the order of practice, and they are no doubt instructive. Thus, he takes a bond,

points out the manner in which it may be enforced, shows how the debtor may oppose the claim, and finally explains those steps by which the debt is secured on the estate by charter and sassine. But this arrangement is not always followed; and even where it is preserved, much of the beneficial essential essential manner arrangement of the subject in general; for how is it possible to understand fully and well the seudal investiture, when it is first presented to us in the shape of a charter of adjudication and sasine, before the original charter, or the charter by progress, has been explained? Or how can the legal sale be understood, before any thing has been said of the voluntary sale?

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In other collections, again (and it is the case in the Juridical Styles), a different classification is sollowed, and all deeds falling under a general name, as for instance, charter, or disposition, are run together without the smallest regard to the order of their appearance in actual practice.

It is against the inconveniences incident to both of these plans, that I have been most anxious to guard; and with that view, I have in my general arrangement taken the deeds as they naturally sollow each other in practice. I show, for example,

in what manner the original right in land is conftituted, how it is transferred to a purchaser, and so on: And while the general classes thus follow in order, the individual deeds, as the charters of resignation and confirmation, with all the relative deeds and forms in completing the title of the purchaser, take their proper places, while the changes arising from the property being held of the Crown, or of a subject, and from other causes, will be found to assume an order consistent with the general arrangement of the collection.

In one word, it is my object to give to the Conveyancer, within the shortest compass, every variety in the form of deeds, and to render the work at the same time a proper assistant to the student in the regular study of his profession, giving him a general view of the history and nature of each deed, and presenting them in that order in which they ought to be studied; and which is at the same time the order of practice; for those sundamental forms from which the others arise, are precisely those which ought first to be studied and understood: The order of this book, then, is the order of study which I should recommend; and to render it useful in the early part of practice, I have subjoined such remarks to each deed, as will, I

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would hope, point out the reason of each step. If I shall be fortunate enough to accomplish these objects, I shall have no reason to fear the imputation of forwardness in this publication.

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There is one thing, however, against which I find it proper to caution the reader. In the plan which I have formed, it necessarily happens that deeds which, according to the common arrangement, would fall under a certain general title, will not in this Collection be found under that title. Let me beg that this may not be imputed to me as an omission; for on fuch occasions, I hope to present what may appear to have been omitted, with more advantage to the fludent in a different part of the work. Thus, under the general title Safine, there will be found only the fafine proceeding on an original charter; but the fafine upon every deed as it comes forward will be presented to the reader. In the same way, under the general head of the Purchaser's Title, it might be expected that instances would be found of the deeds in judicial fales, and in fales under the bankrupt statute; but I have under this title restricted myself to the variations that take place in the voluntary fale of land (and these I hope will not be found defective), leaving the other subjects to be taken up in their order.

In regard to the execution of a work of this extensive and delicate nature, I have only to say, that I have not presumptuously trusted to my own strength. I have collected my materials wherever I thought it most likely to find them good. I have ventured on no speculative changes on the style, but have followed, in the method of expressing the different deeds, that form which is most generally approved of by the best informed Conveyancers: In doing so, I use a safe guide, while I leave behind me much of the perplexed and technical jargon of former times. I have also had recourse to the assistance of those whose aid was most likely to correct the mistakes I might fall into; and to that assistance I owe many acknowledgments.

In this Volume I must trust to a full Table of Contents for pointing out the different Deeds which it contains; but in the last Volume I shall add a copious Index to the whole.

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THE charter and fasine (of which the modern investiture consists) present to us the constituent parts of most other heritable rights, at the same time that they may be considered as the foundation of those deeds; it is on this account that they are placed here as introductory to all other forms.

Of old, the investiture in this country consisted of the act of possession given by the superior in the midst of the pares curiæ; this was the proper investiture, and was lest to the testimony of those in whose presence the ceremony was performed, or was attested by the breve testatum or charter. There was also what was termed the improper investiture, which consisted of a charter granted by the superior, addressed to his bailie, and ordering him to give infestment to the vassal, and of the act of infestment following on it. But now the investiture is in every

case constituted by the superior's charter, containing in it's precept of sasine, and by the recorded instrument of sasine following on that precept.

Our writers make little distinction betwixt those deeds by which an original right to land is created, to be held by the receiver of the granter; and those by which land is transferred to a purchaser to be holden not of the granter. but of the granter's superior. They term both of them charters, and anciently (as we shall find in the history of the disposition) both rights were granted by the fame deed; the former was called a charter de me, the latter a charter a me, de superiore meo. But now a distinction has taken place, the term charter is confined to the original grant, or to the renewal of it in favour of a vassal; while the deed by which heritable property is transferred to a purchaser is called a disposition.

In modern practice, then, a charter may be either an original charter, or a charter by progress; and it is my intention, in the present section, to confine myself to the original charter, leaving charters by progress to another division of my subject, where they will be presented in the order of practice, holding up that view to the student, which will, I hope, be most useful

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to him, as following closely the transactions of business.

That I may keep the idea of the original charter as simple as possible, I must be allowed to say a few words in regard to the different holdings of charters. The holdings of our charters were ward, burgage, seu, blench, or in mortmain; though it may almost be said that they are now reduced to seu holding alone.

Ward holding was the military tenure of this country; the cafualties with which it was attended bore exceedingly hard on the vaffal, and the forfeitures which arose from it were the fource of infinite confusion and distress; the effect of this was to throw the vaffal into the power of the superior, and consequently to createa dependency on the great proprietors, which, in the rebellion 1745, was found to be attended with dangerous confequences to the state. To this we owe the abolition of ward holding. By the act 20. Geo. II. c. 50. ward was converted into blench holding, where the lands held of the crown, and where they held of a subject fuperior, into feu holding; and rules were laid down by the Court of Session (in obedience to the act) for fixing the extent of the feu duties that were to come in place of the fervices and cafualties of the former holding.

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Burgage holding is a species of ward or military tenure, and is that by which royal burghs hold of the sovereign. This tenure remains, and includes two species of rights, one from the crown to the burgh or corporation, the other from the magistrates (under the act 1567, c. 27.) to the inhabitants of the burgh, by which the rights of the individual proprietors to the subjects within burgh are constituted. It is these last mentioned rights with which the man of business has any concern, and they form a system peculiar and distinct from that by which other landed property is transmitted.

The charter in mortmain (which is an allocation of land for charitable purposes) partakes more of the nature of a deed of succession than of an original charter, and will therefore be referved for that department of this collection in which I am to treat of deeds of that nature.

This reduces the modern original charter to the feu and blench charters; or, more properly speaking, to the feu charter alone, since it is seldom that the blench charter will be used. Blench holding is a mere shadow of the seudal tenure, containing an elusory duty as an acknowledgment of the superiority. No original blench charter is given by the crown, and it will be granted by a subject superior only where the superiority is to be retained for the purpose of creating a vote; nay, even the creation of a vote will most commonly be managed by a feu charter. In the common disposition to a purchaser there is a blench holding inserted, for the purpose merely of creating an intermediate right, until the purchaser shall have completed his title holden of the seller's superior. But this blench holding proceeds not on a charter, but on the indefinite precept in the disposition, the nature of which will be afterwards fully explained.

The original charter, therefore, that will most commonly occur to the man of business will be the feu charter. This charter is often preceded by the feu contract, and where there are a variety of extraneous conditions in the right, it may in many cases be convenient to have a deed like the contract, which can be made the foundation of immediate diligence for enforcing these conditions.

In this title, which treats of the feudal investiture, I shall arrange the subject under the following heads: I. The feu charter. II. The blench charter; and, III. The sasine. These I apprehend will give a sufficient view of this branch of modern practice.

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I. OF THE FEU CHARTER.

In treating of the feu charter, I am naturally led to confider the feu contract by which it is fometimes preceded, and which indeed often fupplies the place of the charter, as it contains a warrant for infefting the vaffal. This subject I shall bring under the following heads: 1. The form of the common feu contract. 2. The feu contract for building. 3. The feu contract conveying mines and minerals. 4. For erecting machinery. 5. The feu charter; and, lastly, the variations that are most commonly to be met with in that deed.

1. The Common Feu Contract.

The feu contract contains the conditions which reciprocally affect the superior and vassal, and is closed with a warrant for giving infestment to the vassal. The clauses of it are generally arranged in this manner: 1. The introduction or annunciation of the parties to the agreement. 2. The consideration or cause of entering into the contract. 3. The dispositive clause. 4. The obligation on the superior to infest the vassal, and expressing the terms of the holding. 5. The clause of warrandice. 6. Obligation to relieve the vassal of the bygone public burdens.

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and of the feu duties payable to the mediate fuperior. 7. Obligation on the superior to make the title deeds forthcoming. 8. The affignation to the rents, and warrandice of the affiguation. The preceding clauses affect the superior as the two following claufes do the vaffal. o. The reddendo or obligation on the the vassal to pay the feu duties. 10. An obligation to relieve the superior of the public burdens, from and after the time of the vaffal's entry. The 11th clause contains a joint obligation on the parties to fulfil to each other the respective conditions which they have come under. The 12th is a clause of registration for preservation or for diligence. The 13th is the precept of fasine for infesting the vassal, and the whole is closed by the testing clause.

1. It is contracted and agreed betwixt A. B.* heritable proprietor of the lands

^{*} I prefer marking the names of the parties by letters, and leaving blank the dates of the entry of purchasers, &c. and the names of lands, as less apt to occasion mistakes in making use of these forms than sictitious names and dates might be, for sometimes such names and dates are thought-lessly transcribed.

and others after disponed, on the one part, and C. D. merchant in Edinburgh, on the other part, in manner following: THAT IS TO SAY, the faid A. B. in confideration of a certain fum of money paid to him by the faid C. D. of which he grants the receipt and discharges the faid C. D. and also in consideration of the feu duties and others aftermentioned, has sold, ALIE-NATED, AND IN FEU FARM DISPONED, and by these presents sells, alienates, and in feu farm dispones, to and in favour of the said C. D. his heirs and affignees whomfoever, heritably and irredeemably, all and whole the lands of (here the lands will be described by the names which they bear in the prior title deeds, and the defcription will be closed by mentioning the county and parish within which they lie, thus), all lying within the parish of , and shire , IN WHICH lands and others above of disponed, the said A. B. binds and obliges him, his heirs, and fucceffors, to INFEFT and SEISE the faid C. D. and his foresaids, on their own proper charges and expences, TO BE HOLDEN of the faid A. B. and his forefaids, in feu farm, fee, and heritage, for ever, for the yearly payment Sterling, in name of feu duty, at two terms in the year, Whitfunday and Martinmas, by equal portions, beginning the first term's

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payment thereof at Martinmas next, for the half year preceding, and so forth, at each term of Whitfunday and Martinmas, in all time coming, doubling the faid feu duty the first year's entry of each heir to the lands and others forefaid, and that for all other burden, exaction, demand, or fecular fervice whatever, which may be anywife exacted for the faid lands and others, or any part thereof, in all time coming; AND for that purpose to execute and deliver to the said C. D. or his foresaids, a feu charter, containing a clause of absolute warrandice, precept of safine, with all other usual and necessary clauses, as also such other deeds as may be necessary for fecuring him or them in the lands and others above feued out: Which disposition above written, with the charter and infeftment to follow thereon, and the lands and others hereby disponed, he the said A. B. by these presents BINDS and OBLIGES himself, and his heirs and fucceffors, TO WARRANT to the faid C. D. and his foresaids, to be free from all burdens, encumbrances, and grounds of eviction, at all hands, and against all deadly as law will: AND FUR-THER, the faid A. B. binds and obliges himself and his forefaids, to free, relieve, and disburden the faid C. D. and his forefaids, above written, and the lands and others hereby conveyed, of

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all feu duties payable out of the fait lands, not only preceding the term of Whitfunday but also in all time coming; and of all cess, taxations, minister's stipend, schoolmaster's salary, or other public burdens whatfoever, payable out of the faid lands and others, at and preceding the faid term of Whitfunday term of his entry thereto: AND FURTHER, the faid A. B. binds and obliges himself and his forefaids to make a fufficient progress of the writs of the lands and others above disponed, FURTHCOM-ING to the faid C. D. and his above written, whenever they shall have necessary occasion for the same, upon a receipt and obligation to redeliver the fame within a reasonable time, and under a suitable penalty: AND FURTHER, the faid A. B. hereby makes and conflitutes the faid C. D. and his forefaids his lawful ceffioners and affignees IN AND To the rents and duties of the faid lands, for crop and year and in all time coming, with power to him or them, whom he hereby furrogates and fubstitutes in his full right and place of the premises, to receive and discharge the said rents, and to take every necessary step for recovering thereof which the faid A. B. could have done himself before granting hereof; which affignation above written he binds and obliges himfelf and his foresaids to warrant from fact and deed.

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only. FOR WHICH CAUSES, and on the OTHER PART, the faid C. D. BINDS and OBLIGES himself, his heirs and fucceffors whomfoever, in corroboration of the obligation above written, TO PAT to the faid A. B. and his heirs and affignees, the forefaid fum of L. STERLING of yearly feu duty for the faid subjects, at two terms in the year, Whitfunday and Martinmas, by equal portions, beginning the first half year's payment at Martinmas next for the half year immediately preceding, and fo forth at each term of Whitfunday and Martinmas, in all time coming, with the duplication of the faid feu duty at the entry of each heir in manner foresaid: AND FURTHER, the faid C. D. hereby BINDS and OBLIGES himself and his forefaids, that he and his forefaids shall free and relieve the faid A. B. and his above written from all cess, minister's stipend, schoolmaster's falary, and other public burdens due and payable, imposed or to be imposed, on the faid lands, from and after the term of Whitfunday next, and in all time coming thereafter: AND LASTLY, both parties hereby BIND and OBLIGE themselves and their foresaids to perform their respective parts of the premises to each other under the penalty of 100l. Sterling, to be paid by the party failing to the party performing, cr willing to perform, their part of the conditions,

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and that over and above performance: AND BOTH parties CONSENT to the REGISTRATION hereof in the books of Council and Session, or other judges books competent, therein to remain for preservation, or that letters of horning on six days charge, and all other execution necessary, may pass hereon in form as effeirs; and thereto they constitute

their procurators, &c. AND the faid A. B. hereby DESIRES and REQUIRES you joint-

ly and severally his bailies in that part, to the effect after specified, hereby specially constituted, that, immediately on fight hereof, ye pass to the ground of the lands and others above disponed, and there GIVE and DELIVER to the faid C. D. or his forefaids, heritable state and safine, actual, real, and corporal possession of all and whole the lands and others foresaid, contained in the dispositive clause hereof, and hereby held as repeated, to be holden by them in manner above written, AND THAT by deliverance to the faid C. D. or his forefaids, or to his or their attorney or attorneys, in his or their names, bearers hereof, of earth and stone of the ground of the faid lands, with all other necessary symbols, and this in no ways ye leave undone; WHICH to do the faid A. B. commits to you

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jointly and severally, as said is, his full power, by this his precept of sasine directed to you for that effect. In witness whereof these presents, written on this and the three preceding pages of stamped paper, by E. F. apprentice to G. H. clerk to the signet, are, with a duplicate hereof, subscribed by both parties, at Edinburgh, the day of years, before these witnesses, J. I. servant to the said A. B. and the said E. F.

E. F. witness.
J. I. witness.

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A. B.

C. D.

Sometimes this deed is made out in a less formal manner, of which I shall give you an example. In the following case the vassal, who had possessed as tenant, had a claim to the estate; and the claim being submitted, the arbiters found that the estate should be given to the tenant in seu for 2001. a-year.—This will explain sufficiently the peculiarities of the deed.

^{2.} It is contracted, agreed, and finally ENDED betwixt his Grace A. Duke of B., heritable proprietor of the lands and others after mentioned, on the one part, and C. D., with con-

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fent of E. F. his trustee, on the other part, in manner following: THAT IS TO SAT, the faid Duke, in implement of his part of a decree arbitral pronounced by of day of current, and date the registered the same day in the books of Council and Seffion, proceeding on a fubmiffion entered into betwixt the faid parties, and in confideration of the feu duty, and other duties and fervices herein after specified, hath GIVEN, GRANTED, AND DISPONED, and in feu farm for ever given out and demitted, as by these prefents be GIVES, GRANTS, AND DISPONES, and in feu farm LET's and for ever GIVES OUT and DE-MITS, heritably and irredeemably, to the faid E. F. in trust for behoof of the faid C. D. and his heirs and affignees whomfover, all and whole the lands and others under written, viz. (here the lands were described) lying within the parish of

and shire of , BUT with and under the BURDEN and PRIVILEGE of M. N. proprietor of the estate of making and using a road feet wide through the said lands, as promised to him in a letter from the said Duke, dated

AND DECLARING that the faid C. D., his heirs and fuccessors, and the tenants and possessors of the lands hereby dis-

poned, shall, in time coming, have no right to, or fervitude on, the woods growing on the other lands and estate belonging to the said Duke, or any part thereof, nor to the multures of any part of the faid Duke's property, nor any other duties or fervices furth thereof, on any pretence whatever: AND FURTHER, in case G. H., nephew of the faid C. D., shall be entitled to succeed to the lands and others above mentioned on the death of the faid C. D., or shall acquire right thereto fooner in virtue of any deed of fettlement, or other deed executed, or to be executed, by the faid C. D., in that event the faid Noble Duke hereby binds and obliges himself, and his heirs and fuccessors, to enter and receive the said G. H. as vaffal in the faid lands, upon payment of the same composition that is herein after agreed to be paid at the entry of an heir to the faid lands; AND IN WHICH lands and others, under the burdens and refervations foresaid, and others underwritten, the said Duke BINDs and OBLIGES himfelf, his heirs and fucceffors, duly and fufficiently to infeft and seise the said E. F. as trustee foresaid; and, for that purpose, to make, grant, subscribe, and deliver to him, a sufficient feu charter thereof, containing precept of fasine, clause of warrandice from fact and deed, and other clauses usual and necessary, TO BE HOL-

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DEN of the faid A. Duke of B., and his heirs of tailzie in the estate of B., in feu farm, fee and heritage for ever, for payment of; LIKEAS, the faid C. D., and E. F. his trustee, as cautioner for him, BIND and OBLIGE themselves, conjunctly and feverally, their heirs, executors, and fucceffors whomfoever, TO PAY to the faid A. Duke of B., and his foresaids, or to any person having power and authority from them, the sums following, viz. the fum of 100l. STERLING at London, free of exchange and all other charges, or, in the option of the faid Duke and his forefaids, at Edinburgh, together with the current exchange of the money from Edinburgh to London at the time, and that at the term of Martinmas yearly, during the currency of the leafe of the faid lands granted by A. Duke of B. deceased, to the said C. D. dated which expires at Whitfunday, and thereafter during the lifetime of the said C. D., in the event of his furviving the expiry of the faid lease; and the fum of 200l STERLING at the first term of Martinmas after the expiry of the faid leafe, and the decease of the said C. D.; and of the like fum of 2001. STERLING at the term of Martinmas yearly thereafter, in all time coming, in name of feu duty, beginning the first year's payment of the faid feu duty at the term of Martinmas next:

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As also, that the heirs of the faid C. D. shall pay to the faid Duke, and his forefaids, the fum of 100l. STERLING money, the first year of the entry of each of them to the faid lands, over and above the feu duty above specified; AND THAT they shall free and relieve the said Duke, and his foresaids, of all cess, minister's stipend, schoolmaster's falary, and other burdens whatever, imposed, or to be imposed, upon the faid lands, AND shall answer to the faid Duke's baron bailie courts, when lawfully cited thereto; AND THAT for all other burden, exaction, demand, or fecular fervice, which can anywife be exacted or required furth of the faid lands and others in time coming; DECLARING ALWAYS, that as the feu duty hereby stipulated is come in the room and place of the rent contained in the foresaid tack, the said tack is therefore hereby discharged, and at an end, for all years and terms after the term of Whitfunday next, excepting as to the fingle effect of suspending the claim for the additional feu duty until the years of the tack are actually expired. AND BOTH PARTIES oblige themselves to implement their respective parts of the premisses, under the penalty of 100l. Sterling, to be paid by the party failing to the party observing, or willing to observe, over and above performance; AND they

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consent to the registration hereof in the books of Council and Session, or any other judges books competent, therein to remain for preservation; and, if needful, that letters of horning on six days charge, and all other legal execution, may pass upon a decree, to be interponed hereto, in the usual form, and constitute

their PROCURATORS for that purpose, AND to the effect the said E. F., as trustee fore-said, may be presently inseft in the said lands and others, with the pertinents, to be holden in manner foresaid, the said A. Duke of B. hereby desires and requires you

his bailies in that part, specially constituted to the effect after specified, that upon sight here of ye pass to the ground of the lands before mentioned, and there give and deliver heritable state and sasine, actual, real, and corporal possession to the said E. F., as trustee for the said C. D. and his foresaids, of all and whole the lands, mills, and others, mentioned in the dispositive clause before written, with houses, biggings, yards, parts, pendicles, and universal pertinents belonging thereto, BUT with and under the burdens, reservations, and declarations before mentioned, and to be holden of the said A. Duke of B. and his foresaids, in seu farm,

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for payment of the feu duties and performance of the other obligations before written, all here again holden as repeated brevitatis caufa, but appointed to be specially ingrossed in the infestment to follow hereon; AND that by deliverance to the said E. F., as trustee foresaid, or to his certain attorney in his name, bearer hereof, earth and stone, of and upon the ground of the faid lands, and all other fymbols requifite; and this in nowife ye leave undone. Which to do, the faid A. Duke of B. commits to you conjunctly and feverally his full power, by this his precept of fasine directed to you for that effect. IN WITNESS whereof, these presents, confifting of this and the preceding pages, written on stamped paper by clerk writer to the fignet, are, together to with an exact duplicate hereof, subscribed by the faid parties as follows, viz. by the faid Duke before these witnesles, the at and both his fervants, and by the faid C. D. and E. F. at before these witnesses. fervant to C. D. and writer in , by whom the place, date, witnesses names and designations last mentioned are written.

2. The Feu Contract for Building.

1. The preceding forms will be sufficient for the common seu contract, and I shall now give you an example of the seu contract for building. It is one on which some pains was taken, and which was prepared by an accurate man of business.

IT IS CONTRACTED, AGREED, and FINALLY ENDED betwixt A., heritable proprietor of the fubjects after described, ON THE ONE PART, and B. mason in Edinburgh, ON THE OTHER PART, in manner following, THAT IS TO SAY, Whereas the faid A. has agreed to feu in lots that park belonging to him, lying, &c., conform to a plan thereof. And whereas the faid B. is to make payment of the feu duty and others after specified, redeemable in part as after mentioned, therefore the faid A. has fold and disponed, as by these presents, for payment of the feu duties, and performance of the other prestations under written, he SELLS, ALIENATES, DISPONES, and in feufarm and heritage for ever LETS and DEMITS, to and in favour of the faid B., his heirs and affignees whomfoever, heritably and irredeemably, ALL and WHOLE these parts of the said park after described, marked in the foresaid plan E., signed of this date by the faid parties as relative hereto,

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and measuring 43 feet in front to the north (after allowing 50 feet for the front of the house on lot C., now building by L. wright in Edinburgh, and 47 feet for the north, front of lot D.), with the back ground also marked on the faid plan E., excepting 4 feet square in the west corner of the said back ground, which is allotted for the faid lot D., together with the place allotted for stables and coach-houses on the north fide of faid plan marked E., measuring 20 feet or thereby, and in which measurements the parties hereby acquiesce, be the same more or less; together with the privilege of the stable yard, and free ish and entry thereto, and to the faid ground by the arch, as delineated on the faid plan, in common with the other feuers of the faid park; BUT with and under the servitude of a window to front the faid back ground E. from the lot for stables and coach-houses marked D.; and also with the servitude of putting in joists in the gable wall to be erected by the faid B. on the west side of the entry by the arch in said plan, upon being paid the expence of a nine inch wall, and which shall be paid by the said A. when the faid wall is erected; AND WHICH park contains the whole ground prefently belonging to the said A. upon the east side of

street, and is bounded as follows, viz.



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(here the boundaries were described) together with the teinds of the faid subjects hereby feued, all lying within the parish of St. Cuthbert's and sheriffdom of Edinburgh. IN WHICH lands, teinds, and others above disponed, the faid A. binds and obliges him, his heirs and fuccessors, to infeft and seife the said B. and his foresaids, on their own proper charges and expences; to be holden of the faid A. and his above written, immediate lawful superiors thereof, in feu farm and heritage for ever, for payment of the feu duty, and performance of the other prestations underwritten: Which feu contract, with the grounds, privileges and pertinents hereby disponed, and infeftments to follow hereupon, the faid A. OBLIGES him and his forefaids to WARRANT at all hands, as law will, and the teinds thereof, from fact and deed. AND FURTHER, the faid A. hereby affigns the faid B. and his foresaids IN and To the rents, maills and duties of the above parts of the faid park, hereby feued, from the term of Lammas last, which is hereby declared to have been his entry thereto, and in all time coming, and to warrant the fame from their own fact and deed only; and likewise to free and relieve the said B. and his foresaids of the sum of of yearly feu duty, payable jointly for the faid lot N, alongst with

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three other plots contained in a feu contract entered into between M. and O., registered in the burgh court books, the proportion of which feu duty allotted to faid lot N, by the faid A's rights thereto, acquired from the faid O., is Sterling; and these, as well bygone as in all time coming, and of the teind duties, minister's stipend, and schoolmaster's falary, cess, and other public and annual burdens, at and preceding the faid term of Lammas, the faid B. and his foresaids being obliged to pay the same in all time thereafter, in the proportion of one tenth, payable for the whole of faid park. For which CAUSES, and ON THE OTHER PART, the faid B. OBLIGES him and his heirs and fuccesfors whomfoever, to content and pay to the faid A. his heirs and affignees, the fum of Sterling (being at the rate of ten shillings Sterling per foot for each of the faid 43 feet fronting the north, and of one shilling and sixpence per foot for each of the faid 20 feet allotted for stables and houses), of yearly feu duty, at two terms in the year, Martinmas and Whitfunday, by equal portions, commencing the first term's payment at Martinmas for the half year preceding, and so forth yearly and termly in all time thereafter, with a fifth part more of penalty in case of failure, besides performance, and interest thereof

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from the faid terms of payment, and until pay-BUT DECLARING, that it shall be in the power of the faid B. and his foresaids to pay up the half or two thirds of at Whitfunday the faid yearly feu duty, at the rate of 22 years purchase; they, at or before the Candlemas preceding, giving legal intimation to the faid A. or his foresaids, that they are to make use of the power hereby given to them; in which event, the remaining half or one third of the faid feu duty, as it shall happen, shall continue a perpetual annual feu duty in all time thereafter. But in case the said B. or his foresaids shall fail to give fuch intimation, then the above power of redemption shall for ever after cease and determine, AND DOUBLING the faid feu duty (as the fame may be at the time) on the entry of each heir or fingular fuccessor, as vasfal in the faid subjects: The heirs of the faid B. and his foresaids successively entering to the premises at the expiry of year and day after the decease of the vassal who was last entered and infest; DE-CLARING that it shall not be in the power of the faid B. or his forefaids to subfeu, fell, or dispose of the faid subjects, or any part thereof, to be holden of them or their heirs, or of any other interjected fuperior, but allenarly to be held of the faid A. and his forefaids, without prejudice

nevertheless to the faid B. and his foresaids to grant securities upon the above property, or to exercise any other act of ownership which may not be inconfistent with the manner of holding hereby prescribed: AND FURTHER declaring, that in case the said lot shall hereafter be fold in parcels, yet each particular parcel shall be liable to the said A. and his foresaids in payment of the whole feu duties which shall be due for the whole of the faid lot, referving relief to the perfon fo paying, against the other proprietors, for their share thereof, the purchaser of each parcel only doubling the feu duty payable therefor, by his own rights, at the entry of heirs or fingular fucceffors, as faid is. AND in regard that the entry of fingular fuccesfors is taxed for payment only of a double of the feu duty; therefore, the disponees shall be obliged to enter by a charter of refignation from the faid A. or his foresaids, and be infeft thereupon within the space of three months after the dates of their respective purchases, and that although their author may be then in life, any law or practice to the contrary notwithstanding, the vassals, whether heirs or fingular fucceffors, always paying up the whole bygone feu duties and others which may happen to be due at the time of their entry, and the entrants being at the expence of

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preparing their feveral rights and fecurities (to be expede by the faid A. and his forefaids, their ordinary agent for the time). AND FURTHER, the faid B. obliges him and his forefaids to perform the following conditions, viz. to erect a tenement or dwelling house fronting the north, and in a line with the other tenements to be built on the faid north front, which shall be roofed in betwixt and Martinmas; and also betwixt and faid term, to causeway from the north of the entry down to the stable yard, and likewife the stable yard itself, as delineated on the faid plan, and to maintain and keep up the fame in all time thereafter; the expence of which causeway, and keeping up thereof, to be paid by the feveral proprietors of faid grounds, for the stables and back houses in proportion to the number of feet in front thereof: The faid tenement to confift of five storeys in front, viz. a funk storey and four others; the highest of the fide walls above the foot pavement not exceeding 50 feet, and the tenement not to exceed 50 feet in depth towards the fouth, and with liberty to have a stormount similar to those on the fouth fide of the Riding School fronting Nicholfon's Street. The back walls may be raised nine feet higher than the fore walls, so as to give an additional or attic storey, the height

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in no part of the roof above the top of the front wall exceeding the third part of the depth of the house by more than three feet. There must be a funk area, as marked in the plan, betwixt the tenement and the pavement; and cellars may be built under the pavement. There is also to be a funk area behind the tenement, of two feet in breadth; and no buildings are to be erected on the back ground of any kind, division walls eight feet high alone excepted. All the other feuers are to be laid under the fame restriction, except the purchasers of lots I. and I., who are to have the privilege of erecling shades not exceeding 16 feet in height. The stables, coachhouse, or officehouses, are to be twenty feet over walls in breadth, the fide walls not to be higher than fixteen feet, and the roofs not to be raifed more than ten feet above the tops of the walls, and without any fire place in them; the dung is to be laid no where on the faid ground but in the stable yard, as the same is delineated in the plan; neither shall the faid B. or his forefaids allow any shops or yards for masons, wrights, coopers, fmiths, weavers, candlemakers, nor crackling houses, nauseous chemical preparations, nor noxious or noify manufactures, which may be a nuifance or occasion disturbance to any of the neighbouring feuers, to be placed

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or kept within any parts of the foresaid grounds hereby seued, all in terms of the said seu contract between the said M. and O. in every particular. AND WHEREAS the said A. and the purchasers of the lots in the said park have made a large drain from the northeast corner thereof down to the south end of the drain at

fireet, at their joint expence; THEREFORE, the faid B. obliges himself and his foresaids to be at the joint expence with the faid A. and the purchasers of the said lots, of keeping the same in fufficient repair in all time coming, proportionally for their feet in front; the purchaser of the corner house on the northeast of said park being only to pay for the west front, and the purchaser of the corner house on the northeast of faid park being only to pay for the north front. The north front of the first house, and the east front of the last mentioned house, to be proportioned amongst the whole proprietors of said park, according to their feet in front; the faid A. paying a proportion for keeping up the faid drain for the house now possessed by him on the west side of street, at the rate of 50 feet in front, he and his forefaids having the privilege of carrying a drain from his faid house to the faid large drain. AND the faid B. obliges him and his foresaids to make a drain alongst

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the north front of the tenement to be built by him, which is to be continued to the faid large drain by the purchasers of the lots immediately to the west, and through which the several purchasers on the east are to have the privilege of a communication with the faid large drain; the faid drain in front of faid tenement to be done at the fole expence of the faid B., and that betwixt and Whitfunday next, and to be kept up by him and his forefaids in a fufficient manner in all time thereafter; the same to be 14 inches wide, and built with stone and lime of one foot thick, and to be covered with flags under the pavement; an iron grate to be placed in faid drain, and not to exceed three eighths of an inch in width between the bars; and no necessary houses or water closets shall be allowed to communicate with the faid drain. AND FURTHER, the faid B. obliges himself and his foresaids to allow the trustees for building a bridge over the Cowgate, &c. a communication to the faid large drain from the College, and from the property on the east of the drain belonging to the trustees, and that without recompence to be made therefor. AND WHEREAS Q. and Z. have purchased the two lots of said park marked A. and B., and are to pay up the purchase money, with the burden only of an annual feu duty payable

to the faid A. and his forefaids, of fix shillings Scots each. THEREFORE, the faid B. OBLIGES him and his foresaids to apply the first and readiest of the before mentioned feu duties payable by them, in the different events before specified, in extinction pro tanto of the foresaid whole feu duty of L. payable to the said A. and his foresaids, or of the said sum of L. being the proportion allotted on the faid lot N., as faid is; and these for all other burden, exaction or demand which may or can be required furth or from the subjects hereby feued, on any account whatever. AND LASTLY, the faid parties BIND and OBLIGE them and their foresaids to perform their respective parts of the premisses to each other, under the penalty of 100l. Sterling, over and above performance. AND they CONSENT to the REGISTRATION hereof in the books of Council and Session, or others competent, for prefervation; and if necessary, that all usual execution may pass hereupon on a charge of fix days, in common form; for which purpose they constitute procurators, &c. AND to the end the faid B. and his forefaids may be infeft and feifed in the subjects before disponed, with the privileges and pertinents thereto belonging, and teinds of the same, to be holden as aforesaid, the said A.

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, and each of you, jointly and feverally, as his bailies in that part, to the effect underwritten hereby specially constituted, THAT upon fight hereof ye pass to the ground of the foresaid lands and others before disponed, and there give and deliver heritable state and fasine, actual, real, and corporal possession of all and whole the above parts of the faid park before disponed, with the privileges and pertinents thereto belonging, and teinds of the same, all lying and bounded in manner before mentioned, to the said B. and his foresaids; BUT SUBJECT always to the payment of the feu duties before specified in the several events above expressed, and performance of the haill conditions before mentioned and referred to, and which are to be real burdens on the subjects hereby disponed, and to be contained in the infeftments to follow hereupon, all as particularly before described, and here held as repeated brevitatis causa; AND THAT by delivery to the faid B., or to his certain attorney, bearers hereof, of earth and stone, of and upon the ground of the faid lands, and all other fymbols usual and requisite; and this in noways ye leave undone. Which to do the faid A. commits to you his full power, by this

his precept directed to you for that effect. In witness whereof, &c.

2. I shall give another form of a contract of this kind, made up by one of the incorporations of the city of Edinburgh, as the form of the deeds by which the property of the corporation is feued out. It is not prepared with all the anxiety of the other, but there are some useful clauses in it.

It is contracted and agreed betwirt the parties following, viz. Messrs. A. present deacon and B. present treasurer of the incorporation of

of Edinburgh, for themselves, and in name and behalf of the other members of the said incorporation, and as specially authorised by an act of the said incorporation, dated

ON THE ONE PART, and C. ON THE OTHER PART, in manner following: THAT IS TO SAY, the faid A. and B. in name and behalf foresaid, in consideration of the yearly seu duty and other prestations after mentioned, have SOLD, and by the tenor hereof SELL, and in FEU FARM DISPONE, to and in favour of the said C.

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his heirs and affignees whatfoever, heritably and irredeemably, ALL and WHOLE that area, confifting, &c., as the faid area and fmall piece of ground hereby feued, together with the other property of the faid incorporation contiguous thereto, are in general laid down in a plan salt santant with architect. drawn by and figned by both parties, of the date hereof, as relative hereto: IN WHICH area and piece of ground the faid A. and B., in name and behalf forefaid, BIND and OBLIGE themfelves and their fuccessors in office as deacon and treasurer foresaid, and whole remanent members of the faid incorporation, to INFEFT and SEISE the faid C. and his foresaids, upon their own proper charges and expences, TO BE HOL-DEN by them of the faid incorporation and their affignees, as superiors of the same, in feu farm fee and heritage, for the yearly payment of the feu duty after mentioned, and for that purpose to grant charters, precepts of clare constat, and all other writings necessary: AND the faid A. and B. BIND and OBLIGE themselves and their fuccessors in office, and whole other members of the faid incorporation, TO WARRANT the area and piece of ground above disponed, with these presents, and the infestment to follow hereon, to be good and valid to the faid C.

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and his forefaids, at all hands and against all deadly, and to free and relieve him of all publie burdens payable out of the faid area and piece of ground at and preceding the term of Whitfunday last, which is hereby declared to have been the term of his entry, notwithstanding the date hereof. AND FURTHER, the faid A. and B. BIND and OBLIGE themselves and their successors in office, and whole other members of the faid incorporation, to enter and receive the heirs and fingular successors of the said C. as vassals in the area and piece of ground above disponed, and house to be built on the said area, by precepts of clare constat, charters of refignation, confirmation, or adjudication, as the case shall happen, for and upon payment of the respective sums after mentioned, in name of composition for the said entries, without any further gratuity; the faid vaffals always being at the expence of writing or framing fuch precepts of clare constat and charters. AND LASTLY, the faid A. and B. OBLIGE the faid incorporation to make their rights and titles to the faid area and piece of ground furthcoming to the faid C. and his foresaids whenever they shall have necessary use for the same, upon receipt and obligement for redelivering: FOR THE WHICH CAUSES, and ON THE OTHER PART, the faid C. BINDS and

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OBLIGES himself, his heirs and successors, to make payment to the faid B. as treasurer forefaid, and to his fuccessors in office, for the use and behoof of the faid incorporation, or to their affignees in the superiority of the said area and piece of ground, of the fum of STERLING. at the term of Whitfunday yearly, in name of feu duty, beginning the first year's payment thereof at Whitfunday , and fo forth yearly thereafter at the faid term of Whitfunday in all time coming, with a fifth part more of each year's feu duty of liquidate penalty in case of failure: BUT DECLARING, that the not payment of the faid feu duty for two or more years running shall be no cause of nullity or tinsel of the faid feu right; but nevertheless the vasfal or feuer shall be liable for the said fifth part of the faid annual feu duty, in name of liquidate penalty, in case the same is incurred, and that it shall be lawful for the said incorporation to poind and distrain the readiest goods and effects for the time being upon the faid area or piece of ground, or house to be built on the faid area, for payment of the faid feu duty as it falls due, and all bygones thereof, and of the faid penalty for each year's failure, or otherwise to pursue therefor according to law. AND the faid C. BINDS and OBLIGES himself and his foresaids to

make payment to the treasurer of the said incorporation for the time being, for their use and behoof, or to the affignees of the faid incorporation, of the respective sums of money after specified, in name of composition for the entry of heirs or fingular fuccessors, so often as the fame shall occur, whether fuch heirs or singular fucceffors demand the writings necessary for infefting them or not, viz. The fum of L. for the entry of each heir, and the fum of L. for the entry of each fingular fuccessor, the first year of the entry of such heir or fingular fucceffor, over and above the faid feu duty. AND the faid C. hereby AGREES, that, in case such heir or singular successor shall neglect to demand from the faid incorporation, or their affignees, the precepts or charters necessary for their entry as vassals, for the space of year and day after the succession of such heir, or the purchase of such singular successor, that it shall be lawful for the faid incorporation, or their foresaids, immediately after the expiration of the faid year and day, not only to take decree against such heir or fingular successor for payment of the respective compositions, but also to poind and distrain the readiest goods for the time being upon the faid area or piece of ground, or in the house to be built upon the

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faid area, for payment thereof, and a fifth part more of penalty and expences. AND the faid C. OBLIGES himself and his foresaids TO BUILD a house upon the said area, under the following restrictions, viz. That the same shall not be raised higher than the houses built by

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architect in Edinburgh, upon the area to the north-west, at least not higher than three storeys from the ground floor of the faid buildings, and that no part of the faid house shall extend northward beyond front of the faid house shall not be placed within five feet of the west side of the said area, which space is to be left for light and access to the funk storey. The faid C. also BINDs and OBLIGES himself and his foresaids, at their own expence, to fence his property on the west side with a handsome iron rail, and to carry away the earth from the front of the house to be built by him, and to make a causeway 20 feet wide in front of the faid house, and to be at the expence of keeping the same in repair in all time coming. AND BOTH the faid PARTIES BIND and OBLIGE them and their foresaids to implement and fulfil the premises to each other, under the penalty of L. Sterling, to be paid by the party failing to the party observing or willing to observe the same, over and above

performance. AND both parties consent to the registration hereof in the books of Council and Session, or other judges books competent, therein to remain for preservation, or that letters of horning on six days charge, and all other execution necessary may pass hereon in form as effeirs; and thereto constitute

THEIR PROCURATORS.

&c. ATTOUR to the end the faid C. may be infeft and seised in the area and piece of ground above disponed, the said A. and B., for themselves and in name and behalf of the said incorporation, hereby DESIRE and REQUIRE you, and

each of you jointly and feverally, their bailies in that part specially constituted, that on fight hereof ye pass to the ground of the said area, and small pieces of ground, and there give and deliver heritable state and sasine, with actual, real, and corporal possession to the said C. and his foresaids, of all and haill the foresaid area and piece of ground, lying bounded and described in manner before mentioned, AND THAT by delivering to him and them, or to his or their certain attorney or attorneys, in his or their names, bearers hereof, of earth and stone of the said area and piece of ground, to be holden of the said incorporation of , and

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their foresaids, in seu sarm, see, and heritage for ever, for payment of the seu duties and performance of the prestations before mentioned, and with and under the burdens, restrictions, and declarations before written, which are to be particularly inserted in the instrument of sasine to follow hereupon; AND this in nowise ye leave undone; WHICH to do the said A. and B., in name and behalf foresaid, commit to you, and each of you, conjunctly and severally, their sull power, by this their precept of sasine, directed to you for that effect. IN WITNESS WHEREOF, &c.

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3. In the feus of the areas in the new extended royalty of the city of Edinburgh, the feuer applies by a letter or petition to the Town Council for an unfeued area, and, alongst with his application, presents a plan and elevation of the intended house; and, upon this, there is an act of council, ordering the area to be feued out on payment of the entry money. In the charter which is granted by the town, the subject is described by the feuing plan of the new extended royalty, and granted under this burden:

"That the said and his foresaids shall, in all time coming, maintain and uphold, upon

their own expence, the arches of the cellarage in front of the tenement, and communication with the common fewers, and also the pavement covering the fame; all which subjects lie," &c. In the reddendo the following conditions are inferted: " PATING therefor yearly the faid and his forefaids, to us and our fucceffors in office, or to our collectors, treasurers, or chamberlains, in our name, for the use and behoof of the faid city, the fum of L. in name of feu duty, at two terms in the year, Martinmas and Whitfunday, by equal portions; AND FUR-THER, PATING the fum of L. upon the entry of each heir or fingular fuccessor to the foresaid subjects, in name of composition for an entry, over and above the feu duty of the year wherein the entry is made; which is hereby declared to be in full fatisfaction of any duplication of feu duty, or other legal execution which might otherwise be competent to us or our faid successors in office in character of superiors: PROVIDING always and DECLARING, as it is hereby specially PROVIDED and DECLARED, that it shall not be competent to, nor in the power of, the faid or his forefaids to fubfeu, sell, or dispose of all or any part of the piece of ground before mentioned, and houses and others now built thereon; to be held of them

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or their foresaids, or of any other interjected fuperior; BUT allenarly to be held of and under us and our successors in office, as superiors, in all time coming, without prejudice nevertheless to the faid and his forefaids, to grant fecurities upon the forefaid property, or to exercife any other act of ownership which may not be inconsistent with the manner of holding hereby prescribed; AND as the said piece of ground is part of the extended royalty, we, the faid Lord Provost, Magistrates, and Town Council of the City of Edinburgh, Do hereby DECLARE and their foresaids, are, in that the faid virtue of this charter, entitled to the whole privileges of royalty in common with the other inhabitants of the city of Edinburgh. AND LASTer, it is hereby declared, that if the faid and his forefaids shall convert the subjects built upon the piece of ground hereby disponed into breweries, or do any other act or deed to infer a claim of thirlage, the faid and their foresaids are to free and relieve us and our successors in office the foresaid piece of ground and subjects built thereon, and feu duty payable for the fame, of and from the payment of all multures which can be claimed furth thereof as payable to any mill to which the fame may have been aftricted; WHICH CONDITIONS and provisions are hereby appointed to be engrossed in the instrument of sasine to sollow hereon, and in all future renovations of the seu in savour of heirs or disponees." In the precept of sasine infestment is ordered to be given under the conditions, provisions, and declarations above written.

3. The Feu Contract for Coals or Minerals.

The property of an estate may be separated; the right to the furface, and to use and enjoy the foil, may be given to one person; while the right of working the coals and minerals below ground may be given to another: the original proprietor remaining the superior of both vaffals, and the two estates and the rights of superior and vaffal remaining as distinct as if the fubjects conveyed had been two separate parcels of land. A right to the coals and minerals then may be given either where the furface has been previously feued out, or where that right is retained by the superior. Where the furface has been previously feued out, the charter conveying that property will have contained a refervation of the mines and minerals, and an obligation on the fuperior to indemnify

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the vassal for the damage which may be done by the working of the mines; and I shall suppose the reservation to have been expressed in terms of the clause, page 80.

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1. In that case, the feu contract conveying the coals will describe the subject in this manner: " ALL AND WHOLE the coals and coal heughs within the lands of feued out by the faid A. to B., with full power to the faid L. and his foresaids to search for, work out, and dispose of the same for their own use, and to make use of fuch part of the faid lands as shall be necessary for these ends, he and his foresaids being always bound, as by acceptation hereof he obliges himself and his foresaids, to satisfy and pay the whole damage which the feuers and tenants of faid lands shall fustain thereby, according as such damage shall be ascertained by two arbiters, one to be chosen by each party; and, in case of their differing in opinion, by an oversman to be chosen by the faid arbiters: ALL WHICH LANDS AND SEAMS OF COAL lie in the barony and paand shire of rish of clause of warrandice will be thus expressed: "Which feu right, with the infeftment following thereon, and privilege of working the faid coal, the faid A. OBLIGED him, his heirs and fuccef-

fors, TO WARRANT to be good to the faid L. (the feuer of the coal) and his foresaids, at all hands and against all deadly, as law will, and to free and relieve the same of all cess, feu and teind duties, and other public and private burdens whatfoever affecting the fame, at and preceding his entry, if any fuch there be: AND FUR-THER, the faid A. BINDS and OBLIGES him and his foresaids to free and relieve the said L. and his forefaids from payment of any of the yearly damages that may be due to the feuers and tenants of the faid lands, on account of coal shanks, coal finks, coal roads, or on any other account, and that for crop and year for all preceding crops and years, the faid L. and his forefaids being always bound, as by acceptation hereof they become bound, to pay to B. the feuer of the faid lands, and the other feuers and tenants of the faid lands, all damages that may be found due on account of all these coal shanks, coal finks, coal roads, or in any other manner of way, in terms of the obligation come under by the faid A. and his foresaids in the feu contract passed betwixt him and the said B., , and that for crop and year of date the , and to relieve the faid A. and his forefaids of the faid claims in all time thereafter. AND FURTHER, the faid A. hereby MAKES and

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constitutes the faid L. and his forefaids his cessioners and affignees, NOT ONLY IN AND TO the whole writs and title deeds of the faid fubjects, conform to an inventory thereof figned by him as relative hereto, with the clauses of warrandice and whole other clauses and conditions therein contained, and all action and exeeution competent to follow thereon; BUT ALSO IN AND TO the whole rents, profits, and emoluments of the faid coal fince the , at which time the faid L.'s entry thereto is hereby declared to have commenced, and in all time coming; AND IN AND TO the whole machinery and utenfils used in working the faid coal, with the whole colliers and coalbearers thereto belonging, with power to the faid L. and his foresaids to bring back all colliers and coalbearers that may have deferted the faid colliery, wherever they can be apprehended according to law, without inferring any manner of warrandice or expence on the faid A.; SURROGATING and SUBSTITUT-ING the faid L. in his full right and place of the premises, with power to him and his foresaids to intromit with, uplift, and receive, and, if necellary, pursue for the whole duties, profits, and emoluments arifing from the faid coal; and, in general, every other thing requisite and necesfary to do, as fully in all respects as the said A.

could have done himself before granting hereof; WHICH ASSIGNATION, so far as relates to the writs and title deeds, the said A. OBLIGES himself and his foresaids TO WARRANT, at all hands and against all deadly, as law will, and so far as relates to the rents and duties and emoluments of the said coal, colliers, coalbearers, and machinery and utensils before assigned, from his own fact and deed only." The precept of sasine will be thus expressed: "AND FURTHER, the said A. DESIRES and REQUIRES you

jointly and feverally, his bailies in that part hereby specially constituted, that, on fight hereof, ye pass to the grounds of the faid lands, below the furface of which the faid feams of coal lie, and there give heritable state and safine, with actual, real, and corporal possession of all and whole the foresaid feams of coal lying below the furface of the faid lands of , which were feued out to the faid B., lying and described in manner foresaid, by delivering to the faid L., or to his forefaids, or to his or their attorney or attorneys, in his or their names, bearers hereof, earth and stone of the grounds of the faid lands, with all other fymbols usual and necessary; and this in nowife ye leave undone," &c.

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2. Or the fubjects may be thus described in the dispositive clause of a feu contract, where the furface has been previously feued out, and where the coals and minerals are to be conveyed: " ALL AND WHOLE the lands of were feued out to B., and the teinds, parfonage and vicarage thereof, with houses, biggings, yards, coals, coal heughs, and mines and metals therein of every kind (quarries of stone and lime excepted), parts, pendicles and pertinents of the faid lands, with full power to the faid L. and his foresaids, at all times to search for, work out, and dispose of for their own use all fuch metals and minerals, excepting stone and lime, as faid is, and to make use of such part of the faid lands as shall be necessary for these ends, he and his foresaids always satisfying the feuers and tenants in the faid lands for the whole damages which they shall fustain, as the same shall be ascertained by arbiters, one to be chosen by each party; and in case of their differing in opinion, by an overfman to be chosen by the faid arbiters; which lands lie in the parish of

and shire of ." In the warrandice there will be an exception in these terms: "Excepting from the said warrandice the seu rights of the said lands and teinds granted by the said A. to B.; excepting also the tack of

granted by the faid A. to the coal of present tacksman thereof, without prejudice always to the faid L. to quarrel and reduce the faid feu rights and tacks, upon any ground competent in law, that will not infer recourse against the said A." The affignation to the rents, machinery and colliers, &c. will be the fame as before; and the precept of fafine may be thus expressed: "That upon fight hereof ye pass to the ground of the foresaid lands, and there give heritable state and fasine, with actual, real and corporal possession of all and whole the feued out in manner foresaid lands of to the faid B., and teinds, parsonage and vicarage thereof, with the coals, coal heughs, mines, metals, minerals, and parts and pertinents thereof, to the faid L. and his foresaids, by delivering to him or them, &c., earth and stone of the ground of the faid lands, an handful of grass and corn for the faid teinds, and all other fymbols requifite and necessary; and this in nowife ye leave undone," &c.

3. Where there has been no previous feu-right of the furface, the right to the coals and minerals will be described as in the first of these examples; that is, the coals, metals and minerals of the lands of , with liberty to search for, and to work and carry away the coals and

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minerals therein contained, and for that purpose to sink pits, &c. (in terms of the powers given in the preceding examples, or according to the nature of the operations which are to be carried on); but under this condition always, that the said L. (the feuer of the coal) shall be liable to the said A. and to his foresaids, and to the tenants and possessor of the surface of the said lands, for all damage, &c. (in terms of the conditions expressed on page 80).

4. The Feu Contract for Machinery.

I expected that it would have been possible for me to have given the form of a feu contract containing conditions calculated to insure the erection of proper works, where a situation was seued out with a view to their erection; but in this I have been disappointed. The feus on which the great works in the neighbourhood of Lanark have been erected have nothing peculiar in them, they are merely feus of the ground in the common style. Neither have I been able to find any in the register of the Court of Session, nor in the register of sasines. I must therefore refer you to the feu charter, No. 3., which contains the only transaction of the kind that I have seen.

In that case, the erection of the work is infured by this provision, that a certain sum shall be laid out on it within a certain time; and on the failure of the vassal to implement that obligation, the seu duty is increased, and continues at that increased rate until the condition is complied with.

In preparing an agreement of this kind, it may be proper to distinguish betwixt the sum to be laid out on the buildings, and that to be laid out on the machinery; and perhaps it may be proper to insert an irritancy of the right, in case the conditions of the deed should not be complied with.

5. Feu Charter.

In the preceding sections, the form of the feu contract has been sufficiently explained; and I shall now proceed to that of the seu charter, giving sirst the ordinary form, and then marking out the variations which are to be met with in this deed.

The clauses which are common to this deed are, 1. The narrative, which contains the names and designations of the granter and receiver, with the cause of granting.

2. The dispositive clause, which contains the

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- 4. The reddendo, which specifies the feu duty and services due by the vassal to the superior, and the period of their commencement.
- 5. The clause of warrandice, by which the right is assured to the vassal.
- 6. The affignation to the rents, which empowers the vaffal to levy the rents, and fixes the period of his entry.
- 7. The clause of registration, intended to preferve the deed, and restricting the registration to the books of Session.
- 8. The precept of fasine, which contains the order on the superior's bailie to give infestment to the vassal.

And, *lastly*, the testing clause, by which the whole is authenticated, and rendered legal evidence of the intention of the parties.

I. KNOW ALL MEN by these presents, THAT I A. B., heritable proprietor of the lands and others after disponed, in consideration of a certain sum of money paid to me by C. D., of which I grant the receipt, and discharge him

and his heirs for ever; and also in consideration of the feu duties and services herein contained, have SOLD, ALIENATED, and in feu farm DISPONED, as I by these presents SELL, ALIE-NATE, and in feu farm DISPONE, from me and my heirs and fucceffors whomfoever, to and in favours of the faid C. D., his heirs and affignees whomfoever, heritably and irredeemably, ALL AND WHOLE the lands of (here the lands are particularly described), lying within the parish and shire of HOLDEN, and to HOLD ALL AND SUNDRY the lands and others above disponed, by the said C. D. and his forefaids, of and under me, my heirs and fuccessors whomsoever, as immediate lawful superiors of the same, in feu farm, see and heritage forever, by all the righteous meiths and marches thereof, as the same lie in length and breadth, and with the houses, biggings, &c., freely, quietly, well and in peace, without any revocation or obstacle whatever, GIVING therefor, yearly, the faid C. D. and his foresaids, for the lands and others above disponed to me and my foresaids, immediate lawful superiors of the STERLING, in name of fame, the fum of feu farm duty, at two terms in the year, Whitfunday and Martinmas, by equal portions, beginning the first term's payment thereof at

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Whitfunday next, for the half year preceding, and fo forth yearly thereafter, at the faid two terms in the year, in all time coming; AND DOUBLING the faid feu duty the first year's entry of each heir to the lands and others forefaid, and that for all other burden, exaction, demand, or fecular fervice whatever, which can be anyways exacted for the lands and others forefaid, or any part thereof, in all time coming; WHICH lands and others above disponed, with the feu right and infeftment to follow hereon, I BIND and OBLIGE me and my forefaids to WARRANT to the faid C. D. and his forefaids, at all hands and against all mortal, as law will. AND FURTHER, I hereby ASSIGN, TRANSFER, and MAKE OVER to the faid C. D. and his above written, the rents and duties of the faid lands, from and after the term of Whitfunday next, which is hereby declared to be the time of his entry thereto, and in all time coming, with power to purfue for, receive and discharge the same; WHICH affignation I the faid A. B. BIND and OBLIGE myself and my forefaids to WARRANT, from our own proper fact and deed. And I CONSENT to the REGI-STRATION hereof in the books of Council and Session, therein to remain for preservation, and

thereto CONSTITUTE procurators, &c. And FURTHER, I DESIRE and jointly and REQUIRE YOU feverally, my bailies in that part hereby specially constituted, THAT on fight hereof ye pass to the grounds of the faid lands, and there give and deliver to the faid C. D. or his forefaids heritable state and fasine, real, actual and corporal possession of ALL and WHOLE the lands and others contained in the dispositive clause hereof, with the parts and pertinents thereto belonging, all lying and described in manner before mentioned, TO BE HOLDEN by them in manner foresaid, and for payment of the feu duties above specified, AND THAT by delivering to the faid C. D. or to his foresaids, or to his or their certain attorney or attorneys, bearers hereof, of earth and stone of the ground of the said lands, with all other fymbols necessary, and this in noways ye leave undone; which to do, I commit to you jointly and feverally my full power, by this my precept of fafine directed to you for that effect. IN WITNESS whereof I have fubscribed these presents, written on this and the two preceding pages of stamped vellum by E. F., apprentice to G. H., clerk to the figday of net, at Edinburgh the one thousand seven hundred and ninety-seven

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J. E.

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years, before these witnesses, J. J. my servant, and the said E. F.

J. J. witness.

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E. F. witness.

This is the fimple form of the feu charter, and it is this deed which is generally used in a feu of lands for the purposes of agriculture, as the feu contract is where the object of the transaction is to erect machinery, or to carry on buildings; and the reason of the practice is obvious. In the former case, the feu charter is fufficient to enforce all the obligations betwixt the parties; but in the latter, where there are a variety of extraneous conditions, foreign to the nature of the feudal grant, a contract which contains a personal obligation on the vassal, and gives the proprietor access to immediate diligence against him for forcing implement of these obligations, is a much more useful deed. Sometimes, however, it does happen, that there is both a feu contract and feu charter granted; and I shall give you an instance of this in illustration of the changes that take place on the narrative of the feu charter: Thus, in the feu contract, No. 2. there is a provision, that if

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G. H., the nephew of the vassal, shall afterwards acquire right to the feu, he shall be received as an heir. Accordingly, in the case from which that form was taken, he did acquire right to the feu, and his title was completed by a feu charter from the superior.

To ALL AND SUNDRY to whose knowledge these presents shall come, A. Duke of B., &c. &c. superior of the lands after mentioned, considering that, by seu contract, dated

, entered into betwixt me and C. D. Esq., with consent of E. F. his trustee, on the one and other parts, I the faid Duke, in implement of my part of a decree arbitral pronoun-, dated ced by and registered in the books of Council and Sel-, pronounced in a fubmiffion fion entered into betwixt the faid parties, and in confideration of the feu duties, and other duties and fervices therein specified, GAVE, GRANT-ED, and DISPONED, in feu farm, heritably and irredeemably, to the faid E. F., in trust for behoof of the faid C. D. and his heirs and affignees whomsoever, ALL and WHOLE the lands and others herein after mentioned, DECLARING that, in case G. H. nephew and son-in-law of

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the faid C. D. should be entitled to succeed to the lands and others after mentioned, upon the death of the faid C. D., or should acquire right thereto fooner, in virtue of any deed of fettlement or other deed, executed or to be executed by the faid C. D., in that event I thereby BOUND and OBLIGED myself, and my my heirs and fuccessors, to enter and receive the faid G. H. as vaffal in the faid lands, on payment of the same composition that is herein after agreed to be paid at the entry of an heir to the faid lands, as the faid feu contract, containing precept of fasine for infesting the faid E. F. as trustee foresaid, and other clauses, more fully bears; AND THAT L. and M. daughters and heirs portioners of the faid C. D. having acquired right to the faid feu contract, by their general fervices as heirs portioners forefaid before the sheriff of Edinburgh, dated

with confent of , husband to the said L., and the said G. H. husband to the said M., assigned and disponed from them, their respective heirs and successors, to and in savour of the said G. H. and his heirs male and assignees, heritably and irredeemably, ALL AND WHOLE the lands and others herein after mentioned, and contained in the said seu contract,

to be holden of me and my heirs of tailzie in the estate of N. in seufarm, see, and heritage for ever, for payment of the seu duties and others therein mentioned, as the said disposition and affignation, which is dated

more fully bears: AND THAT, by another disposition and affignation, executed the

, made and granted by the faid C. D., he disponed to and in favours of the said G. H., his heirs male and affignees whomfoever, heritably and irredeemably, all and whole the lands and others herein after mentioned, contained in the faid feu contract, to be holden of me in manner foresaid, as the faid disposition and asfignation more fully bears; THEREFORE, in implement of the obligation contained in the faid contract of feu betwixt me and the faid C. D., I have GIVEN, GRANTED, and DISPONED, as I hereby GIVE, GRANT, and DISPONE, and for myfelf and my heirs, perpetually CONFIRM to the faid G. H. and his heirs male and affignees whomfoever, heritably and irredeemably, ALL and WHOLE, &c., lying within the parish of , BUT with , and shire of and under the burden and privilege to M. N., of making and ufing a road Esq. of

feet wide through the faid lands, as preferved to him in a letter from me, dated of con

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, AND DECLARING that the faid G. H. and his forefaids, and the tenants and possessors of the lands hereby disponed, shall, in time coming, have no right to, or fervitude over, the woods growing on the other lands and effate belonging to me, or any part thereof, nor to the multures of any part of my property, nor any other duty or fervice forth thereof, upon any pretence whatever; TO BE HOLDEN the faid lands and others of me and my heirs of tailzie in the estate of B. in feufarm, fee, and heritage forever, &c. [There was nothing further peculiar in this form, excepting that, in the precept for infefting the faid G. H. and his forefaids, immediately preceding the testing clause, there were these words:] SAVING always my own right, and the right of every other person as accords, and particularly reserving the current and bygone feu duties, in so far as they are resting owing. In witness whereof, &c.

^{3.} My present object is to point out the variety that takes place in the narrative of the seu charters; and I shall therefore give you another instance, where part of a minor's property was seued out. It was a transaction arising from the great demand for situations

having a command of water, and fit for the establishment of machinery.

The transaction was managed in this way,-There was, first of all, an agreement entered into with the proposed vasfal, containing all the conditions of the intended feu right, with this provision, that the contract was to be effectual only in the event that the tutors of the minor obtained the confent of the Court of Session to the proposed grant. A process of sale was then raifed, in which those called to the fuccession of the estate, failing the minor, were, as well as his nearest of kin, called. The summons stated the value of the grounds proposed to be feued, as contrasted with the feu-duty which was to be drawn; and, on the footing of the advantage to be derived to the minor from the transaction, the action concluded that the tutors should be authorised to enter into the proposed feu right. A proof was taken, the whole was reported to the Court, and leave was given The following is the narrative of the to feu. feu right that was granted.

To ALL AND SUNDRY whom it may concern, we A. B. and C., tutors nominated and appointed to E. F. of , heritable pro-

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prietor of the subjects after mentioned, conform to nomination of tutors and curators contained in a disposition, of date, recorded in the books of Council and Session THAT, upon the , we entered into an agreement with G. H. Efq. merchant in Glafgow, whereby we bound and obliged ourselves to feu to the said G. H., his heirs and affignees whomfoever, the lands and others after mentioned, under the conditions, and for payment of the feu duties and other prestations, after specified; AND, in order to enable us to fulfil the conditions of the faid agreement, we applied to the Court of Session for authority to grant the necessary conveyances to the said G. H.; and an action, containing the proper conclusions, was accordingly brought against L. fister to the late E. F. Esq., and also against M. N., &c., all substitutes to the faid E. F. the minor, in the faid estate of , of which the faid lands after mentioned are a part, which action also concluded against the said L. and O. as two of the nearest of kin to the pupil on the father's fide, and P. and Q. two of the nearest of kin on the mother's fide; and the said action having come, in course of the rolls, before Lord Ordinary, his Lordship, on the

allowed a proof of the facts and circumstances

fet forth in the libel; which proof being brought and reported to the Court, and the usual forms gone through for bringing the cause before the Inner House, their Lordships, by judgment of , approved of the forefaid date no ow agreement entered into with the faid G. H; and FOUND and DECLARED, that the feuing out of the lands after disponed, in terms thereof, is for the utility and advantage of the faid pupil; and AUTHORISED us, the faid tutors, to feu to the faid G. H. his heirs and affignees whomfoever, the lands, lying, bounded, and described in manner therein and after mentioned, TO BE HOLDEN of our faid pupil, and his heirs and fucceffors in the lands and barony of , for payment of the feu duties and other prestations after specified, and contained in the agreement above mentioned; and DECERNED and DECLARED the feu rights to be granted by us in name of our pupil, with all that shall lawfully follow thereon, to be as valid and effectual as if granted by a person of lawful age, and with the full management of his estate; and declared the same to be unchallengeable by the faid pupil on the head of minority or lesion, or on any other ground arising from the state of minority in which he now is, as the decree of the Court, of date foresaid, in

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itself more fully bears. THEREFORE, we the faid tutors, as taking burden on us for our faid pupil, under authority of the faid decree, IN IMPLEMENT of our part of the agreement entered into with the faid G. H. in manner forefaid, and IN CONSIDERATION of the fum of L.

Sterling paid to us by the faid G. H. as the value of the mill erected on the grounds hereby disponed, and of the premium paid to the tacksman of the faid mill, of which fum of L.

Sterling we hereby grant the receipt, renouneing all exceptions to the contrary, and difcharging the faid G. H. and his forefaids thereof; AND ASLO in consideration of the feu duties and other prestations after specified, HAVE SOLD, ALIENATED, and in feufarm DISPONED, as we hereby, in name of our faid pupil, and under authority foresaid, SELL, ALIENATE, and in feufarm DISPONE, from our faid pupil and his heirs and fucceffors, and the persons substituted to him as aforefaid, to and in favours of the faid G. H. and his heirs and affignees whomfoever, heritably and irredeemably, ALL AND WHOLE the lands of , with the mill and whole houses erected on the said lands, with the property in the water of the river so far as our faid pupil has right thereto as pro-

prietor of the ground hereby feued, and to the

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roads leading to the east through the property , in fo far as our faid pupil or his authors had or have any right thereto, WITH LIBERTY to the faid G. H. to erect a mill on the faid lands; PROVIDING always, and DE. CLARING, as it is hereby expressly PROFIDED and DECLARED, that the faid G. H. shall not manufacture or grind the corns of the tenants and vassals on the estate of without the confent of our faid pupil and his foresaids: DECLARING ALSO, as it is hereby expressly DECLARED, that the said G. H. and his foresaids shall have no right to the multures payable to the mill of , nor to the fervices of the fucken, these being hereby, and, by the foresaid agreement betwixt us and the said G. H., expressly referved to the said E. F. and his forefaids: AND FURTHER, it is hereby DE-CLARED, that the faid G. H. shall erect a cotton or woollen manufactory on the grounds hereby feued, the expence of the buildings and erections necessary for the carrying on of which works shall cost at least the sum of that within the space of five years from the , the date of the foresaid agreement, under this condition, that fo long thereafter as the faid works shall remain unexecuted, the fell duty and relief duty hereby payable shall be doubled

doubled by the faid G. H. or his forefaids: AND LASTLY, it is hereby expressly provided, that the faid G. H. and his forefaids shall be bound to attend the baron courts of the barony of , and to fubmit themselves to the jurisdiction thereof in all matters competent to the faid court, TO BE HOLDEN AND TO HOLD all and whole the subjects above disponed by the faid G. H. and his foresaids, of and under the faid E. F. Efq., his heirs and fucceffors in the , as immediate faid lands and estate of lawful fuperiors of the same, in feufarm, fee, and heritage for ever, and by all the righteous meiths and marches thereof, for payment of the annual feu duty after mentioned; GIVING therefor yearly to the faid G. H. and his above written; to us, or our factor, or to our faid pupil and his foresaids, immediate lawful superior of the fame, the fum of POUNDS STERLING of feu duty, at two terms in the year, Whitfunday and Martinmas, by equal portions, beginning the first term's payment thereof at the term of Martinmas next, for the half year preceding, and so forth yearly, at the terms of Whitsunday and Martinmas, in all time coming: But, in case the said G. H. shall not, within five years from the faid, erect a cotton or woollen manufactory on the grounds hereby

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feued, the expence of the building and erections necessary for the carrying on of which fhall cost at least the sum of ; THEN, and in that case, and so long as the said condition fhall remain unimplemented, the faid G. H. and his abovewritten shall pay to the said E. F. and his forefaids the fum of of feu duty, and shall double the sum coming in place of relief duty. AND we do hereby BIND and OBLIGE our faid pupil and his forefaids to enter and receive the faid G. H. and his abovewritten, vaffals to them in the lands hereby feued out, and to infeft and feife them therein without any composition or gratuity, the faid G. H. and his foresaids paying to the said E. F. and his forefaids, in lieu and place of re-, at the expiry of lief duty, the fum of every twenty years from the term of Martinmas last, any law or practice to the contrary notwithstanding; and the said G. H. and his forefaids freeing and relieving our faid pupil, and his abovewritten, of all cess, minister's stipend, and schoolmaster's falaries, and all other public burdens payable by our faid pupil out of the faid lands, and that from and after the term , being the said G. H.'s entry of thereto, and in all time thereafter; and that for all other burden, exaction, demand, or fecular

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service, which can be anywise exacted from the said lands and others, or from any part thereof, in all time coming; which lands, &c." (Clause of warrandice.) The rest of this deed is in common form; and, in the precept, it is ordered that the conditions shall be inserted in the insestment to follow thereon.

4. There is another case that may create some change on this part of the deed, and that is, the existence of a liferent over the subject at the time of its being seued out. In such a case, the terms of the seu charter will run thus:

"I, A., heritable proprietor of the fee of the lands and others after mentioned, with the special advice and consent of B. my husband; and I the said B., for my own right and interest, and as taking burden on me for the said A. my wise; and we both, with mutual advice and consent; and I, C., liferenter of the said lands, IN CONSIDERATION of certain sums of money paid to us as siars and liferenters by D., of which sums we respectively grant the receipt, and discharge the said D. and his heirs and successors for ever, have SOLD, ALIENATED, and in feufarm DISPONED, &c. in common form." The

holding will be thus expressed: "To BE HOL, DEN, the lands and others hereby seued out by the said D. and his foresaids, of and under me the said C., in liferent, during the subsistence of my right of liferent in the said lands; and of me the said A. and my heirs and successors in see; AND after the expiry or dissolution of the said C.'s right of liferent, TO BE HOLDEN of and under me the said A., and my heirs and successors, immediate lawful superiors thereof, in seufarm, see, and heritage for ever; GIVING therefor;" and so on, in common form.

6. Variations on the form of the Feu Charter.

But, in place of giving more examples of this deed, I shall endeavour to arrange those changes which usually take place upon it in such a way as to give you the command of them, and at the same time to answer the purpose of a variety of styles. These changes I shall bring under the following heads: 1. Conditions relating to the seu duty and public burdens; 2. Reserved powers in the superior; 3. Restrictions on the right of property, and obligations on the vassal; and, lastly, Provisions relative to the entry of heirs.

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1. Conditions relative to the Feu Duty and Public Burdens.

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1. There is often added to the reddendo of the charter an astriction, in such terms as those: " AND DOUBLING the faid feu duty the first year of the entry of each heir to the faid lands, as use is in feu holdings: AND ALSO, the said , and his tenants in the faid lands, carrying their whole grindable victual yearly to , to which mill the faid the mill of lands are hereby aftricted, and paying and performing the multures, knaveship, and services, according to use and wont: As ALSO, compearing at the courts of the barony of be holden on any part thereof, when lawfully fummoned, and observing the acts and statutes of the Court under the penalties therein contained, in so far as such powers may be now exercised; and these for all other burdens," &c.

2. There is fometimes added to the reddendo this further condition, (it comes in immediately before the words, and that for all other burden), "WITH POWER to me and my fore-faids to poind the ground and readiest goods on the said lands, yearly and termly, for the said feu duty, and that upon decrees obtained be-

fore my own bailies in the faid lands, upon a citation of the faid tenants and feuers, personally, or at their respective dwelling places, with power to apprise the goods so poinded upon the grounds of the said lands, without any other formality, or the necessity of carrying the same to the market cross."

3. Irritancy ob non folutum canonem.—This irritancy is fometimes added: it comes in immediately before these words, and that for all other burden. It may be thus expressed: "Declaring alwars, as it is hereby expressly provided and declared, that if at any time the said, or his foresaids, shall allow two years feu duty, whole and together, to remain

years feu duty, whole and together, to remain unpaid, then, from the last term of payment thereof, this present right, with all that may then have followed thereon, shall, ipso facto, become void and null, without the necessity of any declarator or process of law for that effect; and I and my foresaids shall instantly be at liberty to remove the said, or his abovewritten, from the subjects hereby seued out; nor shall it be competent for him or them to purge this irritancy at the bar in any process of removing which I or my foresaids may bring against them; under which condition and irrigations.

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4. The fuperior is entitled to demand his whole feu duty from any part of the lands, and consequently from a subvassal in a part of the subject; but this may be remedied by the following addition to the reddendo : " AND FUR-THER, declaring, that, in the event of the faid or his foresaids subfeuing the said lands, or any part thereof, that neither I nor my foresaids shall be at liberty to demand from any one subvassal the whole feu duties hereby specified, but shall be entitled to demand from fuch fubvassal a proportion only of the said feu duty corresponding to the value of the property fubfeued to him; RESERVING always power to me and my foresaids to demand the whole feu duty entire from my own immediate vaffal in the lands."

- 5. Sometimes there is a power of redeeming the feu duty, as on page 24.
- 6. The public burdens, where there is no provision in the feu contract, are payable by the vassal; but this is generally provided for in the

contract by an addition to the reddendo, in these terms: "And also, the said B. and his fore-saids freeing and relieving me and my foresaids of a proportion of the land tax, and other public and parochial burdens, for crop and year and in all time thereafter, payable out of my lands and estate of , corresponding to the sum of Scots; which sum, it is hereby agreed, shall be held to be the valued rent of the lands hereby seued out."

2. Reservations in favour of the Superior, and conditions affecting him.

All referved powers in favour of the superior, and every burden on the right, must be inserted in the close of the dispositive clause.

1. Refervation of the mines and minerals.

"BUT RESERVING always to me and my heirs and fuccessors, all and singular mines of gold, silver, copper, tin, lead, coal, as also, all metals and minerals in the said lands, of whatever kind the same may be, excepting only stone and lime, which are to belong to the said and his abovewritten: AND it is hereby DECLARED, that it shall be in the power of me and my fore-

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faids, to fearch for, work, and carry away the faid metals and minerals fo referved to us, and for that purpose to erect houses for workmen, and to make roads through the said lands; in short, to use the said lands in whatever way may be necessary for the sull exercise of our referved powers, we always paying to the said

and his foresaids, all the loss and damage which shall be occasioned by our occupying any part of the said lands in houses, roads, or otherwise, as well as every other damage which may arise to him or his foresaids from our workings, as these damages shall be ascertained by two arbiters, one to be chosen by each party; and in case of their differing in opinion, by an oversman to be chosen by the said arbiters."

2. Power to multiply superiors.

"BUT WITH and under this CONDITION and PRO-VISION ALWAYS, that it shall be lawful to me, my heirs and successors, to split, divide, alienate, convey and dispone, at pleasure, the superiority or dominium directum of the subjects hereby disponed, in such shares and proportions, and to such person or persons as we shall think proper, without the concurrence of the said or his foresaids, vassals in the said subjects, who,

by accepting hereof, agree to fuch splitting and dividing, and confent to their holding under as many fuperiors as I the faid or my forefaids shall think fit to create, any law or custom to the contrary notwithstanding; under which condition and provision this charter is granted by me, and confented to and accepted of by the faid and his forefaids, and no otherways, TO BE HOLDEN," &c.

3. Obligation on the superior to fell. (This will come in immediately before the clause of registration). " AND IN CASE the faid or his forefaids shall at any time betwixt the date hereof and the term of find it convenient for them to purchase the right of superiority of the fubjects hereby feued, then, and in that event, I hereby bind and oblige myself and my foresaids, on payment of the sum of to dispone and convey to the faid

or to his abovewritten, the whole lands and others herein contained, absolutely and irredeemably, with all right or interest which I have therein, to be holden of my immediate lawful superior, in the same manner and on the fame terms that I hold or might have held the fame myself."

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3. Restrictions on the Right of Property, and Obligations on the Vassal.

i. A clause of pre-emption. This clause will come in immediately after the description of the lands. " BUT UNDER this CONDITION always, that in case the faid or his abovewritten shall at any time be inclined to sell or dispose of the subjects hereby conveyed, they shall be bound, as they by acceptance hereof BIND AND OBLIGE themselves, first of all, to offer the same to me or my foresaids at the price : And if he or they shall fell, or in any shape transfer, the property of the said subjects, without first offering the same to us in manner foresaid, the said sale or transference shall be void and null; under which express condition these presents are accepted, and not otherwise; and which condition is hereby appointed to be inferted in the fafine to follow hereon, and in the future rights and investitures of the faid fubjects."

2. A prohibition to subseu. (This may be brought in before the clause of registration.) "Declaring, as it is hereby specially provided

and DECLARED, that it shall not be competent to nor in the power of the said to subfeu, sell, or dispose of all or any part of the subjects hereby seued out, TO BE HOLDEN of him or of his foresaids, or of any other interjected superior, BUT ALLENARLY to be held of and under me and my foresaids, as superiors, in all time coming, without prejudice nevertheless to the said and his foresaids to grant securities upon the foresaid property, or to exercise any other act of ownership which may not be inconsistent with the manner of holding hereby prescribed."

3. Restrictions on the use of property. (These will come in after the dispositive clause.) "But under this condition always, that it shall not be in the power of the said or of his foresaids, nor of those deriving right from them, to erect or carry on within the bounds of this seu, any brewery, tanwork, distillery, or other manufacture or chemical process, nor to erect lime kilns, or smelting houses or surnaces for any purpose, within any part thereof, their right extending no farther than to the use of the subject for the purposes of agriculture, or for working and carrying off, in their natural and unwrought state, the metals and minerals;

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under which condition this right is granted and accepted of by the said and his fore-saids, and not otherwise; AND the same is hereby appointed to enter the sasines to follow hereon, and to be inserted in the future insestments of the said subjects."

4. Provisions relative to the Entry of Heirs.

I. For infuring the vassal's entry. (This will be inserted in the end of the deed, before the clause of registration). "Providing and DECLARING, as it is hereby PROVIDED and DECLARED, that in case insestment shall not be taken on the precept of sasine herein contained, and the instrument of sasine duly recorded within six months from the date hereof, then and in that case the precept shall become void and of no effect, without hurt or prejudice to the other parts of the deed, and which condition shall be inserted in all the renovations of the feu."

2. For regulating the entry of an heir of entail. (This may be taken in immediately before the clause of registration.) "AND it is hereby DECLARED, That in case the said vassal

shall at any future period execute an entail of the said lands, then each of the heirs of tailzie therein specified, claiming to be entered in the said lands, and who shall not at the time be nearest and lawful heir of line to the person last entered and insest therein, shall pay for his or her entry, to me and my foresaids, a sull year's rent of the said lands, in the same manner that a singular successor would do."

3. The object in these regulations is to secure the entries of heirs and fingular fucceffors, and consequently the relief or entry money: But another method has been devised, which gives the fuperior a claim, independent of the entry of the heir or purchaser. An instance of this will be found in the feu contract, No. 2., page 36.; and this clause is sometimes in this form. After fpecifying the feu duty, it goes on thus: " AND PROVIDED ALWAYS, that if two years of the faid feu duties shall run into the third unpaid, these prefents shall thenceforth cease and become void, and the lands recognosce and return to me and my foresaids: AND ALSO, the heirs of the said B. paying L. the first year of the entry of each heir to the possession of the said lands and others, over and above the current year's feu duty, and that whether they infeft themselves

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therein or not; AND each singular successor in the said lands and others paying one whole year's rent thereof to me or my foresaids for their entry therein as vassals, without discounting the said seu duty in computing such year's rent; and which year's rent shall be over and above the seu duty of the current year in which the purchase is made; and the same shall be due by the purchaser, whether he enters vassal or not."

4. Renunciation of the casualties. (This also may be taken in before the clause of registration.) "AND FURTHER, in case any casualty shall fall from the lands being in non-entry, or from any other cause, or in the event of any irritancy being incurred, then and in that case I do hereby bind and oblige myself, my heirs and successors, to renounce and dispone the said casualty, and to discharge the said irritancy to the said

and his abovewritten, so often as the same shall happen to fall or be incurred, as I by the tenor hereof, and per verba de presenti, do hereby renounce, dispone, overgive, and discharge him and them thereof for ever.

II. OF THE BLENCH CHARTER.

Blench holding is one of the manners of hold. ing which is put in the option of a purchaser in the common disposition, when the lands are given to be held either of the granter's superior in the fame way that the granter himself holds, or blench of the granter, on relieving him of the duties payable to the superior. But the blench holding in this case never goes further than to make the fasine on the disposition carry right to the property previous to the purchaser's entry with the superior, in the manner which will be afterwards explained in treating of the purchaser's title. Besides this, blench holding may appear in an original charter from a subject; and the general form of the charter, and the arrangement of the clauses, is the same as in the feu charter. The only changes occur in the tenendas and reddendo; and a fingle example will fufficiently illustrate all that is peculiar to this deed.

KNOW ALL MEN by these presents, THAT I A, heritable proprietor of the lands and others as

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ter mentioned, IN CONSIDERATION of a certain fum of money paid to me by B., of which I hereby grant the receipt, HAVE SOLD, ALIENAT-ED, and DISPONED, as I by these presents SELL, ALIENATE, and DISPONE, to and in favours of B., his heirs and affignees whomfoever, ALL and WHOLE (here the lands are particularly defcribed), lying in the parish of and shire , TO BE HOLDEN AND TO HOLD all of and fundry the lands and others above specified by the faid B. and his foresaids, of and under me and my foresaids, immediate lawful superiors thereof, in blench farm, fee, and heritage for ever, by all the righteous meiths and marches thereof, as the same lie in length and breadth, with free ish and entry thereto, and all and fundry parts and pertinents thereof, freely and quietly, without any impediment whatever, PATING therefor yearly, the faid B. and his forefaids, to me, my heirs and fucceffors, for the lands and others above specified, the sum of one penny Scots, in name of blench farm, at Whitfunday yearly, upon the ground of the faid lands, if asked only; AND THESE for all other burden, exaction, demand, or fecular fervice which can anywise be demanded forth of the lands and others foresaid; WHICH LANDS and others, with this charter, and the infeft-

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ment to follow hereon, I BIND and OBLIGE me and my foresaids to WARRANT to the said B. and his abovewritten at all hands and against all deadly, as law will: AND FURTHER, I here. by ASSIGN and TRANSPER to the faid B. and his foresaids the rents and duties of the said lands, from and after the term of which is hereby declared to be the time of the faid B.'s entry thereto, and in all time coming, with power to pursue for, receive, and discharge the fame; WHICH ASSIGNATION I BIND and OBLIGE me and my foresaids to warrant from our own proper facts and deeds: AND I CONSENT to the registration hereof in the books of Couneil and Seffion, therein to remain for preservation; and thereto constitute

my procurators, &c. AND FURTHER, I DESIRE and REQUIRE you

jointly and feverally, my bailies in that part, hereby specially constituted, THAT, on sight hereof, ye pass to the ground of the said lands, and there GIVE and DELIVER to the said B. or his foresaids heritable state and saline, real, actual and corporal possession, of ALL and WHOLE the lands and others contained in the dispositive clause hereof, with the parts and pertinents thereto belonging, all lying and described in manner foresaid, to be

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holden by them in manner abovewritten, AND THAT by delivering to the said B. or his fore-saids, or to his or their certain attorney or attorneys, in his or their names, bearers hereof, earth and stone of the ground of the said lands, with all other symbols necessary; and this in nowise ye leave undone: Which to do I commit to you, jointly and severally, my full power, by this my precept of sasine directed to you for that effect. In witness whereof, &c.

IH. OF THE SASINE.

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In the Roman law, delivery was necessary to transmit property; and, in the sale of land, there was not only a symbolical delivery, by earth and grass; but the seller went off the lands, and left them void for the purchaser, who entered into them, and took possession. In the same way, in the sale of a house, the house was left empty by the seller, the purchaser entered into it, and shut the door.

There was thus both a real and fymbolical delivery; and we see the same customs prevailing in this country which prevailed in Rome previous to the dissolution of the empire, and during the ages which followed that event.

In the Roman deeds which have been preferved to us, and in the forms of Marculfus, compiled in the 7th century, we have evidence of the original practice; while, in the Leges Burgorum, c. 55., and Balfour, tit. Safine, c. 3, as well as in ancient deeds, we discover what was the practice of old in this country.

The form of delivery, then, by which a fale of lands was completed, must have remained nearly the same, though the evidence of this form seems to have undergone some changes; for, in the Roman law, the delivery was proved by certificates or notitiæ,—in the middle ages, this was done by the brevia testata, or by the evidence of the pares curiæ,—and these again were supplanted by the instrument of sasine.

Craig fays expressly, that, in the beginning of the 16th century, infestment was given in the Highlands of Scotland, in presence of the pares curiae, and without writing; that, even in the Low Country, in the beginning of that century, it was common for the vassal to receive a charter from the superior, in which the superior certified that he had invested the vassal, and given him right and possession; but that, by the end of that century, it had become common to take charters, and also precepts of sasine, "and, besides, to establish the delivery

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" of possession by a public instrument." But he shows more strongly the situation of matters at that time, when he tells us, L. ii. d. 7. § 8., "That being fometimes confulted, Whether, "when the fuperior afferted that he had given " fafine to the vaffal, that acknowledgment, or "the acknowledgment of the bailie to the fame " effect, were equivalent to a fafine? I have "answered, That I did not think it suffi-"cient; for, were we to admit that the ac-"knowledgment of the fuperior is equiva-"lent, there never would be a fafine, nor would "there be occasion for notaries; and this would "open a door for innumerable frauds." He then goes on to show the necessity for having an instrument under the hand of a notary, proving the act of delivery.

From Balfour we learn that this point had been decided in 1569, in the case of Ram-say, where an instrument of sasine was required; and, in Stair's time, instruments of sasine were so simply established in practice, that, he tells us, B. ii. tit. 3. § 16., that they could be supplied by no other means of probation. "Though the superior, with a thousand witnesses, should subscribe all the contents of a sasine, it would be of no effect to make a real right without the attest of a notary, in which

" fense the vulgar maxim is to be understood, " nulla sasina nulla terra."

The period at which the instrument of safine was first introduced into the practice of this coun. try has not been well afcertained. Craig supposes the form to have been brought from England by James I. But the customs and manners of the churchmen feem to afford a more certain means of communication; and as notorial certificates became common in this country, it would feem that the inftrument of fafine had crept into practice, and at last established itself (notwithstanding the outery against notaries) beyond the possibility of a change. Besides, were it of any consequence to show that this hypothesis of Craig's is totally unsupported, Erskine has produced instruments of sasine, one in the 1404, and the other in the 1410 (Appendix, No. 3. and 4.); whereas James I. did not return from his captivity in England till the 1423.

This, however, is a point of very little moment, since we know that for a long time the nature of the evidence required to prove the delivery of land was of a very fluctuating nature; and it was not much beyond the days of Lord Stair that the point was absolutely fixed, and

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the instrument of sasine rendered an indispensable piece of form.

But although this instrument may be confidered as a mere form, it is a form to which our law owes infinite obligations. It is to this form that we are indebted for the introduction of our records; and, what is at least of equal importance, it is this instrument that has given that admirable uniformity which pervades our system of deeds.

Let us only suppose that natural possession had been held fufficient, (and there were fome attempts at this in the 1628 and 1629, which were fortunately discountenanced by the decifions of the Court; Stair, B. III. tir. 2. § 6.), that a disposition, for instance, followed by natural possession of the land, constituted a complete title to the subject, into what an endless variety of forms must our deeds have branched out? Look to the conveyancing of England; observe the different ways in which a right to land may be conflituted; consider the effect of the different rules of preference by which these forms of conveyance must be regulated, and you will then fufficiently value the restraining influence of our fasine, which reduces all our land rights to one form, and prescribes to them but one single rule of preser-

The fafine is a notorial instrument attesting the symbolical delivery of land; and as the form of the instrument depends on the act of delivery, I shall mention in what that act confifts. The fuperior appears by his bailie, the vassal by his attorney; and these, alongst with a notary public and two witnesses, proceed to the ground of the lands. The offices of bailie and attorney may be executed by fuch persons as the disponee, or person in right of the precept, may appoint, without any formal nomination; the bailie's authority is fufficiently fanctioned by the blank precept; and the power of the attorney is derived from the possession of the deed. Being arrived on the lands, the attorney for the vaffal delivers the deed containing the precept of fasine to the bailie, and defires him to execute the office of bailiary thereby committed to him. The bailie receives the deed from the attorney, and delivers it to the notary, to be read and explained to him and to the witnesses present. The notary then takes the deed, explains the nature of it; that it is a charter by fuch a one to fuch a one, of fuch and fuch lands, and reads the precept of fasine. The bailie upon this delivers the sasine, by giving

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whatever other fymbols are required; and this being done, the attorney puts a piece of money into the hands of the notary, and fays, "I take instruments in your hands on what has passed."

The instrument follows this ceremony closely, and consists of the following heads: 1. The invocation. 2. The date. 3. The appearance of the parties. 4. The narrative of the warrant on which the sasine is to proceed. 5. The requisition by the attorney. 6. The acceptance of the office by the bailie, and his delivery of the warrant to the notary. 7. The publication of the warrant. 8. The delivery of sasine by the bailie to the attorney. 9. The requiring of instruments. 10. The place and calling of the witnesses. These ten heads include all the parts of the instrument, and it is closed by the doquet of the notary and the subscription of the witnesses.

Instrument of SASINE.

In the Name of God, Amen. Be it known to all men by this present public instrument, That upon the day of, in the year of our Lord, and in the reign of our Sovereign Lord George the Third, by the stace of God, King of Great Britain, France

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and Ireland, Defender of the Faith, the year, IN PRESENCE of me notary public, and of the witnesses subscribing, COMPEARED personally J. G., as procurator and attorney for C.D. whose power of procuratory was sufficiently known to me the faid notary public, and passed with us and R. S., bailie in that part specially constituted, in virtue of the precept of salue after inferted, to the ground of the lands after mentioned, respectively and successively, HAT-ING and HOLDING in his hands a FEU CHARTER made and granted by A. B., of the date under written, and containing therein the precept of sasine after inserted; Br which charter the faid A. B. SOLD, ALIENATED, and in feufarm DISPONED, to and in favour of the faid C. D. Efq., his heirs and affignees whomfoever, hertably and irredeemably, ALL and WHOLE the lands of (here the lands are taken from the dipositive clause), all lying within the parish of and sheriffdom of , TO BE HOLDEN in manner and for payment of the feu duties and others mentioned in the faid charter, as the

in manner and for payment of the feu duties and others mentioned in the faid charter, as the fame in itself more fully bears; which feu charter, containing the precept of sasine above mentioned and after inserted, the said attorney presented to the said bailie, and desired him to proceed to the execution of the office of bailiary

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thereby committed to him, by giving sasine to the said G. D. of the lands and others above mentioned, in terms of the above charter and precept of sasine therein contained; which desire the said bailie sinding to be reasonable, he received the said charter into his hands, and delivered the same to me notary public subscribing, to be read and published to the witnesses present, which I did accordingly; and of which precept of sasine therein contained the tenor follows, in these words: "AND FURTHER, I DE-" SIRE and REQUIRE YOU

" jointly and feverally, my bailies in that part, " to the effect after specified, hereby specially " constituted, that, immediately on fight here-" of, ye pass to the grounds of the lands and " others above disponed, and there, respective-" ly and fuccessively, the one after the other, " you give and deliver heritable state and sa-" fine, actual, real, and corporal possession to " the faid C. D., or his foresaids, of ALL and " WHOLE the lands and others contained in the dispositive clause hereof, with the parts and pertinents thereto belonging, all lying and described in manner beforementioned, to be holden by them in manner forefaid, and for payment of the feu duties above specified, and that by delivering to the faid C. D., or to his fore-

" faids, or to his or their certain attorney or at-" torneys, bearers hereof, of earth and stone of " the ground of the faid lands, respectively, " with all other fymbols necessary; and this in " noways ye leave undone; the which to do, I " commit to you, jointly and severally, my full " power, by this my precept of sasine, directed " to you for that effect. In witness whereof I " have subscribed these presents, written on this " and the two preceding pages of stamped vel-" lum, by E. F. apprentice to G. H. clerk to " the fignet, at Edinburgh, the twenty-fourth " day of March one thousand seven hundred " and ninety-seven years, before these witnesses, " J. J. my fervant, and the faid E. F. (Signed) "A. B. E. F. witness, J. J. witness." AF-TER READING and PUBLISHING of which charter, and precept of sasine therein contained and above inferted, the faid bailie, in virtue thereof, and of the office of bailiary thereby committed to him, GAVE and DELIVERED to the faid C. D. heritable STATE and SASINE, actual, real, and corporal Possession, of ALL and WHOLE the lands and others foresaid contained in the said charter; AND THAT by delivering to the faid attorney of earth and stone of the ground of the faid lands, respectively and successively after others, after the form and tenor of the faid charter and precept of sasine therein contained,

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Peritas p. G. H. N. L. F. with in all points; WHEREUPON, and upon ALL and SUNDEY the premisses, the faid attorney asked and took inftruments in the hands of me notary public subscribing : THESE THINGS were so done upon the grounds of the faid lands, respectively and fucceffively, betwixt the hours of twelve noon and one afternoon, of the day, month, year of God, and of the King's reign, respectively first abovewritten, BEFORE, and in presence of, E. F. and J. J., both writers in Edinburgh, witnesses to the premisses, specially called and required, and hereto with me fubscribing.

Et ego vero G. H. clericus Edinburgenfis dioceseos, ac notarius publicus, auctoritate regali, ac per Dominos Concilii et Seffionis, secundum tenorem acti parliamenti admissus, quia premissis omnibus et singulis, dum sic ut premittitur dicerentur, agerentur, et sierent, una cum prænominatis testibus presens personaliter interfui; eaque eritas probat, 7 omnia et singula præmissa, sic sieri et dici, vidi, G. H. N. P. Sscivi et audivi, ac in notam cepi, ideoque hoc presens publicum instrumentum manu aliena (or,

E. F. witness. . J. witness.

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if the notary has filled up the blanks, he will fay, " manu mea et aliena;" or, if it has been written entirely by himself, " manu mea,") Super hanc et duas præcedentes paginas pergamenæ debite impressæ, fideliter scriptum exinde confeci, et in banc publici instrumenti formam redegi, signoque nomine et cognomine meis solitis et consuetis signavi et subscripsi, in sidem, robur et testimonium veritatis omnium et singulorum præmissorum rogatus et requisitus.

This instrument is written upon parchment properly stamped, and when it is written book ways, is signed at the bottom of each page by the notary (who adds the letters N. P. for the words Notarius Publicus after his name), and by the two witnesses. With regard to the doquet annexed to the instrument, the notary will follow the style in his commission; and the motto which he has chosen, and which is also there expressed, will be used in authenticating the sasine. Within 60 days from its date, the sasine must be recorded either in the particular register of the shire in which the lands lie, or in the general register of sasines.

When the saline is given in to be recorded, the names of the parties and of the lands, and the day and hour of presenting it, are entered in a minute book, and the entry signed by the person who gives it in, and by the keeper of the records. It is the date of this entry, and not the time of copying the saline into the record, by which the recording and priority of the saline is judged of. The saline is afterwards copied into the register; and, if it be a business requiring much care, it would be proper for the person concerned to compare the saline with the copy in the record. The saline, after being recorded, is returned to the person by whom it

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ing n it was presented, with a marking in these terms:

"At Edinburgh the day of April.

" years, this sasine was presented by E. F.

" writer in Edinburgh, and is registered in the

" 425th book of the new general register of sa-

" fines, reversions, &c., and on the 287th, 288th,

" 280th and 200th leaves of the same, conform

" to the act of parliament made thereanent in

" June 1617, by me, substitute to A. R., de-

" pute to Mr. A. S., clerk to and keeper of the

" faid register. (Signed) W. L."

The form of the instrument which I am presenting to you in this section, is the instrument
proceeding on an original charter. The changes
that take place on this form, when it proceeds on a disposition to a purchaser, or in favour of one acquiring right to an unexecuted
precept, or on an heritable bond, or on a crown
charter, or on an entail, will be fully explained
in their proper places. The only change on
our present form will arise from the inserting of
the conditions contained in the charter; and of
this sew instances will suffice. It is in the narrative of the warrant only that any change takes
place, and I take the instrument of sasine on the
feu charter, page 55.

vas prefented: with a IN THE NAME OF GOD, AMEN, &c. &c. HAVING and HOLDING in his hands a CHARTER of the lands and others herein after mentioned, of the date and containing the precept of fafine herein after inferted, made and granted by A. duke of B. &c. &c., fuperior of the lands aftermentioned, in favours of the faid H. G., his heirs male and affignees, AND BY which charter the faid noble duke, for the reasons and on a recital of the deeds and judicial proceedings therein mentioned. GAVE, GRANTED and DISPONED, and for himself and his heirs and fucceffors perpetually confirmed, to the faid H. G., his heirs male and affignees whomfoever, heritably and irredeemably, ALL and WHOLE the lands and others underwritten, viz. (here the lands were inferted as in the difpositive clause of the charter), lying within the parish of and shire of WITH and UNDER the BURDEN and PRIVILEGE to M. N. Esq., of making and using a road of feet wide through the faid lands, as preserved to him in a letter from the faid A. duke of B., dated; AND DECLARING, that the faid G. H. and his forefaids, and the tenants and posiesfors of the lands hereby disponed, shall in time coming have no right to or fervitude over the woods growing on the other lands and estate

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belonging to the faid duke, or any part thereof. nor to the multures of any part of the faid duke's property, nor any other duties or fervices furth thereof, upon any pretence whatever, 70 BE HOLDEN* of the faid noble duke and his heirs of tailzie in the estate of B., in feufarm, fee, and heritage for ever, in manner mentioned in the faid charter, for payment of the fum of (here the obligation to pay the feu daty was inferted, in the terms of the charter); and that they shall free and relieve the faid duke and his foresaids of all cesses, minister's stipend, schoolmaster's falaries, and other burdens whatsoever. imposed or to be imposed on the faid lands, and shall answer at the faid noble duke's baron bailie courts, when lawfully cited thereto: WHICH CHARTER the faid attorney presented to the faid bailie;" and fo on, in common form, with this variation only, that fasine was given to the vasfal. "WITH AND UNDER the burdens, referva-"tions, and declarations before mentioned; To "BE HOLDEN of the faid noble duke and his "foresaids in feufarm, for payment of the said "feu duties, and performance of the other obli-

^{*} This part of the charter is not usually narrated in the sasine, nor is it necessary in order to render these real burdens;
they are constituent parts of the seudal contract, and, independent
of the sorce of the sasine, are exigible by the superior: Yet situations may occur in which they would be of use.

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"gations beforewritten, all herein holden as "repeated; SAVING ALWAYS to the said noble "duke his own right, and the right of any other person, as accords. Whereupon, and "upon ALL AND SUNDRY the premises, the said "attorney asked and took instruments in the hands of me notary public subscribing. These "Things were so done," &c.

The changes on the form of the instrument consist principally in the narrative which you give of the warrant, where the style and words of the warrant itself should always be closely followed. In the common case it is unnecessary to insert the conditions of the charter, and it is only where it is required by the terms of the deed that they are inserted. Where this is the case, the change, as it arises from the conditions of the charter, will easily be made; and of this I give you the following example: It is the sasine on the charter from the town of Edinburgh to their vassals in the new extended royalty, the conditions of which you have on page 39.

[&]quot;IN THE NAME OF GOD, AMEN, &c. &c. HAVING AND HOLDING in his hands a CHARTER O

the date aftermentioned, containing in the end thereof the faid precept of fasine made and granted by A., Lord Provost of the city of Edinburgh, B. C. D. and E., Efquires, Bailies, F. Dean of Guild, and G. Treasurer; and also by the remanent members of council, as reprefenting the community of the faid city; WHERE-Br, for the causes therein expressed, they, for themselves and their successors in office, GAVE, CRANTED, and in feufarm perpetually DISPON-ED, to and in favour of the faid L., his heirs and affignees, heritably and irredeemably, ALL and WHOLE (here the subject is described); all which fubjects lie, by annexation, within the parish of St. Giles, royalty and sheriffdom of Edinburgh, together with all right and title which the faid Lord Provost, Magistrates and Council, or their predecessors or successors in office, had, have, or could claim or pretend thereto in time coming: PROVIDING ALWAYS and DECLARING, asit is by the faid charter PROVIDED and DECLAR-ED, that it shall not be competent to, nor in the power of, the faid L. and his forefaids to fubfeu, fell, or dispose of all or any part of the piece of ground before mentioned, and houses and others now built thereon, to be held of them or their forefaids, or of any other interjected superior, but allenarly to be holden of

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and under the faid Lord Provost, Magistrates and Council, and their successors in office, as fuperiors, in all time coming, without prejudice, nevertheless, to the faid L. and his foresaids, to grant fecurities upon the foresaid property, or to exercise any other act of ownership which might not be inconsistent with the manner of holding thereby prescribed. AND as the said ground is part of the extended royalty, the faid Lord Provost, Magistrates, and Town Council of the city of Edinburgh, do by the faid charter DECLARE, that the faid L. and his forefaids are. in virtue of the faid charter, entitled to the whole privileges of royalty, in common with the other inhabitants of the city of Edinburgh. AND, LASTLY, it is by the faid charter DECLARED, that if the faid L. or his foresaids shall convert the fubjects built on the faid piece of ground into breweries, or do any other act or deed to infer a claim of thirlage, then the faid L. and his foresaids were to free and relieve the said Lord Provost, Magistrates and Council, and their succeffors in office, the foresaid piece of ground and subjects built thereon, and feu duty payable for the same, of and from the payment of all multures which could be claimed furth thereof, or payable to any mill to which the same may have been astricted; TO BE HOLDEN in manner

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and for payment of the feu duty particularly mentioned in the said charter, as the same, containing clause of warrandice, the said precept of sasine, and several other clauses, in itself more sully bears. Which charter, containing in the end thereof the said precept of sasine, the said procurator and attorney foresaid exhibited and presented to the said bailie;" and so on, in common form.

These examples will suffice for the sasine on the original charter. In giving directions to the notary in the country, it will be proper for the man of business to consider whether the lands fand in the person of the superior, upon one or more fets of titles, because if the parcels of which the lands confift have come by feparate titles into the person of the superior, it will create a discontiguity, which requires the act of giving infeftment to be performed on both parcels of lands. In the same way, if the parcels are naturally discontiguous, that is, do not lie in contact, but have other parcels fituated betwixt them, the act of infeftment must also be repeated on each separate parcel. Where the subjects are different, and require separate symbols, as lands and fishings, there, too, separate eds of infeftment must be given, and the appropriated fymbol of each subject attended to. The notary should also be directed to have the ceremony performed before sunset, and to mark in the instrument the hours of giving sasine accordingly: not that it has been fixed that the circumstance of infestment being given after sunset would invalidate the sasine, but it is better to prevent the possibility of a question.

With regard to the fymbols of possession, these follow very closely the nature of the subject to be transferred, as, earth and stone for lands; earth and stone, with a penny money, for an annualrent out of the lands; clap and happer for mills; net and coble for fishings; a handful of grafs and corn for teinds; the Bible and the keys of the church for a patronage; and in burgage subjects, the hasp and staple of the door of the house. These symbols are generally expressed in the precept of sasine, and then the notary can be at no lofs. It may happen, however, that the precept trusts to the general expression contained in it, of " all other " fymbols usual and necessary;" and therefore in all cases the notary ought to attend carefully to the nature of the subjects of which he is to give infeftment, and to infert in the fafine the proper and necessary symbols.

You will find in collections of styles, instru-

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ments of sasine propriis manibus: But these must either proceed on a charter or warrant figned by the superior; and in that case it would be wrong to confound the form by giving fafine propriis manibus, when the common form is fo eafily complied with. Or this form must proceed without any previous warrant, and depend for its effect on the subscription of the superior or granter adhibited to the instrument of sasine, a form of obligation which ought by no means to be trusted to; and therefore I shall not detain you by laying an example of it before you. but only give this caution, that when fafine propriis manibus is reforted to, the name and defignation of the writer of the instrument, with the other constituent parts of the testing clause used a deeds, must be inserted in the close of the astrument, immediately before the doquet, and he witnesses must see the superior or granter dhibit his fubscription; whereas, in ordinary asines, they are witnesses to the matter of fact ecited in the instrument, not to the notary's ignature.

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OF THE PURCHASER'S TITLE.

In the preceding title I have given the deeds by which the property in land is constituted, and in which the feudal investiture consists, In the present title I shall give those deeds by which property is transferred to a purchaser.

The original right in land is given by a charter; but when that right is transferred to a purchaser, who is to come into the place of the original vassal, it is by a disposition that the transference is made. The form of this disposition has suffered very considerable changes; and it is only by attending to its history, that the nature of this deed can be properly understood.

It is not very clear what the power of proprietors was, with regard to the disposal of their landed property, in the early periods of our law; but if this power was then extensive, it came afterwards to be very considerably circumtered
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fcribed. The restrictions under which proprietors laboured, arose principally from the want of all means by which a superior could be forced to receive a new vassal; from the dangers to which a subvassal was exposed by the expiry of procuratories of resignation and precepts of sa-sine on the death of either of the parties; and from the effect of private and latent insestments.

At that time there was a mutual contract entered into betwixt the feller and purchaser, and the feller granted two charters and two precepts of fasine. The purpose of the contract was to give the purchaser or his heir an action against the seller, or against his heir, for a renewal of the charters and precepts, if that should have been rendered necessary by the death of either of the parties; and, on the other hand, to give the feller action against the purchaser or his heir for the price; fince at that period, amidst the dangers to which a purchaser was exposed. he would not have been in safety to have paid the price at the time of entering into the transaction. Of the charters, one was a charter a se de superione suo, called also a public right, by which the purchaser was to hold of the seller's superior; the other was a charter de se, called a base or private right, by which the purchaser

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was to hold of the feller. Upon this last char. ter the purchaser took infestment, which carried right to the property of the lands, and fo he was fecured against the posterior acts of the feller. He then endeavoured to bargain with the fuperior for an entry, and that being con. certed, he either refigned the lands on the procuratory in the charter granted by the feller, a se, and obtained a charter of refignation from the fuperior, or he took infeftment on the precept in the charter, a fe, and obtained a charter of confirmation from the superior, and in one of these ways he completed his public right, by which he carried both property and fuperiority. To have confirmed his own base right, proceeding on the charter of the feller, de fe, would not have attained the object; for that charter was intrinfically base, and could not, by any act of the fuperior's, have been rendered a public right.

Such were anciently the forms by which lands were conveyed to a purchaser. It was by gradual steps that their transmission was released from the dangers to which it was then exposed, and that the forms of transmission were rendered simple and effective. The first remedy was given by the act 1496, which was intended to secure creditors, and to enable them

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to force an entry from the fuperior. The purchaser from that time appeared in the character of creditor; he led an apprising on a trust bond, and obtained as a creditor what the superior resuled to give him as a purchaser. The consequence of this was to render the entry of purchasers a much less difficult negotiation.

In the 1540, it was enacted (by statute 105 of that year), that natural possession by occupying the lands, or civil possession by drawing the rents for the space of a year and day, excluded all latent fafines; and the establishment of the records in the 1617, completed that fecurity which the operation of the act 1540 had begun: so that it had then become fafe for a purchaser to pay the price, and of course his part of the mutual contract was no longer necessary. This reduced the contract to nearly its present form. It became an unilateral deed of fale, containing an obligation on the feller to grant the two charters a se and de se, at the same time that it contained a precept of fafine for infefting the purchaser. Now, as either of these infestments might have been obtained through a fafine, it feems to have occurred to men of business, that by leaving the nature of this precept, and of the nfestment following on it perfectly indefinite, t might be construed into the one kind of infeftment or the other, according as the fituation of matters should render it necessary. This practice accordingly went on, and the notion gained strength, till, in the 1680, the point came to be decided by the Court of Session. It was then fixed (Stair, 15th July 1680; the Bishop of Aberdeen), that an infestment taken in this indefinite manner might, in the option of the receiver, be construed to be a public or private right, as he found most convenient for himself.

From this time the form of the disposition became what we now see; a deed of sale, containing the necessary clauses for constituting the purchaser's right; an obligation to insest the purchaser, a me or de me; a procuratory of resignation for completing the public right by resignation, and an indefinite precept of sasse, which may be the foundation of a base or of a public right, according to the will of the purchaser.

The order in which I mean to arrange the deeds which relate to the title of the purchaser, is to give, 1. The preliminary deeds, such as minutes of sale, articles of roup, &c. 2. The disposition to strangers, with the changes that

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take place on it. 3. The deeds necessary for completing the purchaser's title; and, lastly, The varieties in this deed, arising from the state of the parties, or the nature of the subjects.

1. Of the PRELIMINARY DEEDS.

These deeds consist of the inventories which are necessary to show the state of the titles; of the missives and minutes of sale which are sometimes required, and of the articles of roup on which the estate is brought to public roup.

1. Of the Inventory.

The first object of the man of business, for the seller of an estate, is to arrange the title deeds of the estate, and to make up an inventory of them, that the nature of the seller's title may be known, any desects in it supplied, and any farther engagement avoided, than what the seller is able to implement. This inventory may be made up either in the common way, by taking the deeds in the order of time without any explanation of them; or if there be any intricacy in the titles, the inventory may contain an explanation or history of the estate, and

then a fimple enumeration of the titles belong. ing to each parcel. But I shall explain this by an example.

INVENTORY and STATE of TITLES of the lands and estate of , belonging to A. B., Esq. referred to in the articles of roup and sale of the said estate.

The estate which is to be exposed to sale under the articles of roup above mentioned, consists of three parcels of lands, of which the sollowing is the description, as contained in the title deeds.

1st Parcel of Lands.

(Here the first parcel is described, as in the titles.)

2d Parcel of Lands.

(Here, in the same manner, the second parcel is described.)

3d Parcel.

(Described in same manner.)

*The 1st and 2d parcels of the lands above described belonged to John, and were held by him of , for payment, yearly, of the fum
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^{*} This introductory view of the titles is not common; but where they are at all intricate, it will certainly be useful.

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fum of 50l. Scots, at two terms in the year, Whitsunday and Martinmas, by equal portions, in name of seu duty, and doubling the said seu duty at the entry of each heir to the said lands, and that for all other burden, exaction, or secular service whatever. These lands were afterwards sold to James, and brought to a judicial sale, alongst with his other lands and estates. At the judicial sale they were purchased by George, by him sold to William, who again sold them to the said A. B., Esq., and C. D., to each one half.

The half fold to C. D. was conveyed by him to Mr. Farquharfon accountant in Edinburgh, in trust, for behoof of his creditors, and fold by Mr. Farquharfon at public roup, alongst with part 3d, to E. F. writer in Edinburgh, who conceyed both subjects to the said A. B., Esq.

Titles common to Parcels 1st and 2d.

of the lands in the two first parcels, in favour of John, dated 10th July 1729.

Sasine following thereon, in favour of John, dated , and recorded

Contract of sale betwixt John and James, containing an obligation to infest, a me wel de

me, with procuratory of refignation and precept of fasine, dated

4. SASINE in favour of James, proceeding on the faid contract, dated and recorded

Titles of Parcel 1st.

- I. DECREET of SALE in favour of George, dated
- 2. DISPOSITION and ASSIGNATION thereof by George to William, dated
- 3. AGREEMENT betwixt A. B. and C. D., agreeing to purchase the lands contained in parcel is and 2d, and to divide them betwixt them, dated, recorded
- 4. Disposition of the lands in parcel 1st, by William to A. B., containing a conveyance to the decree of fale, No. 1., and subsequent writings, in so far as they relate to the lands conveyed, dated
- fuperior, confirming James's base insestment. No. 4., and disponing the lands to A. B., in terms of the decree of sale. This charter contains a precept of sasine, and is dated 226 February 1771.

6. INSTRUMENT of SASINE following thereon dated, and recorded

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Titles of Parcel 2d and 3d.

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- No. 1. PRINCIPAL DISPOSITION by the faid William to C. D., of the lands in parcel 2d, containing a conveyance to the faid decree of fale; dated 17th December 1770.
- the faid Z., superior, confirming James's base infestment, and disponing the lands in parcel 2d to C. D., in terms of the decree of sale, dated 22d February 1771.
- 3. INSTRUMENT of SASINE following thereon, dated, registered
- Farquharson accountant in Edinburgh, of the lands in parcel 2d and 3d, and of other lands, in trust, for his creditors, and containing an obligation to infest, a me and de me, procuratory of resignation and precept of sasine, clause of absolute warrandice, &c., and dated
- dated, and recorded
- EXTRACT DISPOSITION by Mr. Farquharfon the trustee, in favour of E. F. writer in Edinburgh, of the lands contained in parcels 2d and 3d, containing obligation to infest, a me and de me, with procuratory of resigna-

tion and precept of fasine, assignation to the clause of absolute warrandice, &c. dated, recorded in the books of Session, 3d August 1776.

7. Disposition and Assignation by the faid E. F. to the faid A. B., Esquire, of the faid two parcels, dated

8. SASINE in favour of A. B., following on the precept in No. 6., to which he has right by the affignation in the preceding article, dated, recorded

9. CHARTER of CONFIRMATION by Z., the superior, in favour of A. B., confirming No. 4, and 5. and subsequent articles, in so far as they relate to parcels 2d and 3d, dated

N. B. All the articles in this inventory will be delivered up to the purchaser, excepting Nos. and , which contain other lands; and these will be made furthcoming when wanted.

What is contained on this and the three preceding pages is the inventory of the title deeds of the estate of , referred to in the articles of roup of said estate, signed by the said A. B. of this date. In witness whereof the said A. B. has subscribed these presents, written by at Edinburgh the day of before these witnesses, &c.

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This form of an inventory is proper only for particular cases; where, for instance, the estate confifts of different parcels of lands, descending from different authors, as in the example I have given. In fuch cases, the effect of it is to give a general and connected view of the titles to the man of business who may have occasion to go over them, and which is an infinite faving of time and trouble; for with this index, in place of reading over every paper in a long progress, he is enabled at once to turn to the material parts of the different deeds. It is indeed a general rule, which ought to be carefully attended to (in preparing the inventory of a progress), That as much of each deed ought to be narrated, as will show whether the progress has been regularly deduced: and with this general rule I shall leave this subject.

2. Missives and Minutes of Sale,

Cases may no doubt occur, where a sale is agreed upon under such circumstances, that it cannot be instantly finished by the execution of a disposition; and where it may be desirable to have the parties bound, so as to prevent either

of them from refiling. This may be done by the interchange of letters, or more formally by a minute of sale. In the case of letters, they ought each to be holograph of the granter, or they should be executed according to the solemnities of the act 1681, in this form: " And "I have subscribed this missive, written by " before these witnesses, " and I am, Sir, your most humble fervant, " A. B.;" otherwise they do not bind the parties. They do not require any very precise form; but the following points ought to be attended to: On the one hand, the period of the payment of the price, and from what term it is to bear interest, and the security that is to be given if the price should remain unpaid; on the other, that a disposition, with all the usual clauses, should be granted, a progress produced, incumbrances cleared, the term of entry fixed,

The letters ought to be so expressed, that each letter will afford evidence of a completed bargain, and contain the terms of the agreement on both sides.

the period at which the public burdens are to

affect the purchaser, and the nature of the war-

randice, with its exceptions, specified.

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Sir, Edinburgh, 31st March 1797.

As I have agreed to fell you the lands of as presently possessed by me and my tenants, and have received your letter, obliging you to pay the stipulated price of five thousand pounds Sterling, at the term of Martinmas next, with interest thereof from Whitsunday also past, Therefore I hereby oblige myself, my heirs and fucceffors, against the said term of Martinmas, to deliver you a formal disposition to the said subjects, with every necessary clause, To be holden of my superior for payment of a feu duty of 5l. Sterling, and to be burdened with one fourth of the minister's stipend, cess, and other public and parochial burdens payable out of my whole lands and estate of term of your entry to be at Whitsunday next; and I am at the faid term of Martinmas to produce a legal progress, and to clear the lands of all incumbrances, excepting the current tacks and missives or minutes of lease on which the tenants are in possession. I am, Sir, your most humble fervant, A. B.

To L. M. Efg.

Letter by the Purchaser.

SIR, Edinburgh, 31st March 1797.

As I have agreed to purchase from you the as prefently possessed by you and your tenants, and have received your letter obliging you, at the term of Martinmas next, to grant me a disposition to the said subjects, with the usual clauses, to be holden of your superior for payment of 51. of feu duty, and to be burdened with the fourth part of the minister's stipend, cess, and other public and parochial burdens payable out of your whole lands and estate; and as you are then to produce: legal progress, and to clear the lands of all incumbrances, excepting the current leafes and missives or minutes of lease on which the to nants are in possession, I therefore oblige my felf, against the said term of Martinmas next, to pay you the fum of five thousand pounds Sterling, as the price of the faid estate, with interest from Whitfunday next, which is to be the term of my entry to the faid lands. I am, Sir, your L. M. most humble fervant,

To A. B. Efq.

The minute of fale is only a temporary right, but more formal than the missives, and giving

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direct diligence (without the necessity of an action), in implement of the obligations contained in it; and in cases where the transaction cannot be instantly completed, it is now (since the act laying a stamp duty on agreements) more commonly used than the missive of sale.

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Minute of Sale.

IT IS CONTRACTED, AGREED, and ENDED, betwixt A. B. Efq. of , on the one part, and L. M. Esq. of , on the other, in manner following: THAT IS TO SAY, the faid A. B. has sold and DISPONED, and by thefe presents, in consideration of the price underwritten, SELLS and DISPONES, to and in favour of the faid L. M., his heirs and affignees, heriably and irredeemably, ALL and WHOLE the ; OF WHICH lands the faid A. B. ands of UNDS and OBLIGES him, his heirs and fucceffors, o grant and deliver to the faid L. M. and his oresaids, against the term of Whitsunday next, eing the term of his entry to the faid lands, valid and formal disposition, containing an bligation to infeft, a se vel de se, procuratory f refignation, clause of absolute warrandice, acepting therefrom the leases on the said lands, fignation to the writs and evidents, and to the ents from and after the faid term of Whit-

funday, with precept of fasine, and every other usual and necessary clause; AND with the said disposition to deliver up a complete progress of titles to the faid lands; or, where the faid titles contain other lands, an obligation to give accels to the same whenever the said L. M. shall have occasion therefor: AND FURTHER, the said A. B. becomes bound to free and relieve the faid lands of all debts and incumbrances affecting them, and of all teinds, ceffes, taxations, feu duties, stipends, and other public and parochia burdens affecting the same, or payable therefrom, at and preceding the faid term of Whitfunday next: FOR WHICH CAUSES, and on the OTHER PART, the faid L. M. BINDS and OBLIGHT himself, his heirs and successors, to make payment to the faid A. B., his heirs and affignees, against the said term of Whitsunday next, of the fum of 8000l. Sterling, as the price of the faid lands, with 1600l. of liquidate penalty in case of failure, and the due and legal interest of the faid principal fum from the faid term of Whitfunday next, and in time coming during the not payment thereof. Or, if the price is to be allowed to remain in the hands of the pur chaser, say, BINDS and OBLIGES himself and his foresaids, on receiving the disposition be fore mentioned, to grant and deliver a bond

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payable at Martinmas next, with a fufficient cautioner, for the fum of eight thousand pounds Sterling, being the price of the faid lands, with the legal interest thereof from and after the faid term of Whitfunday next, and one fifth part more of liquidate penalty in case of failzie. As ALSO, to free and relieve the faid A. B. and his foresaids of the teinds, cess, taxations, feu duties, stipends, and other public and parochial burdens due from the faid estate, from and after the faid term of Whitfunday next. AND, LASTLY, both parties BIND and OBLIGE themselves to implement their respective parts of the premisses to each other, under the penalty of 500l. Sterling, over and above performance: AND they CONSENT to the registration hereof in the books of Council and Session, or in other judges books competent, that etters of horning on fix days charge, and all other execution necessary may pass hereon in form as effeirs; and thereto they constitute THEIR PROCURATORS, &c.

In WITNESS, &c.

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This is a fale of A. B.'s entire interest in the state; but it may happen to be a sale of part of he estate only; in which case it will be necessary

to divide the public burdens and valuations be-

twixt the proprietors of the part fold and of the part retained. This may be done by the following clause inserted immediately preceding the clause obliging both parties to implement the obligations of the deed. " AND FURTHER, the faid L. M. BINDS and OBLIGES him and his forefaids to pay to the superior of the faid lands , being one half of the the fum of L. feu duty payable out of the whole estate of for the year commencing at the faid term of Whitfunday next, and the like fum of yearly thereafter, in all time coming: L. And further, to pay the cefs, road stent, and school stent effeiring to the said lands, according to the valued rent thereof, from and after the faid term of Whitfunday, and one half of the stipend, teind, and vicarage payable out of the , from and after the whole estate of faid term of Whitfunday: Declaring, that if these public and parochial burdens shall exceed 151., the faid L. M. shall be entitled to an abate ment of the faid price effeiring to the excess, in the proportion that the price of eight thousand pounds Sterling bears to 315l. 3s. 9d. Sterling the free rents of the faid subjects. And, on the

other hand, if the faid burden shall fall short of

the faid fum of 151., the faid L. M. shall be

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bound to pay an additional price, at the rate before mentioned.

A fale made in these terms gives each party at any time action or diligence, upon registration of the minute, against the other, but the letters or minute may be fo expressed as to make the fale conditional; fo that the bargain may fall by the neglect to perform the condition of the fale: As, for instance, where the letter fays, "On condition that you pay me the fum of against the term of Martinmas next, "then I become bound to fell you the lands of , and against that term to grant you "a disposition," &c. And the purchaser says, "As you have agreed, on my paying you the "fum of against the term of Martin-" mas next, to fell me the lands of "I hereby oblige myself, against that term, and "on receiving a disposition, &c. to pay to you, "your heirs and affignees, the fum of If the term of the purchaser's entry should be prior to the term of payment, it will be proper to put in a condition obliging the purchaser, if he shall fail to pay the price at the time stipulated, to pay a certain fum as the rent of the Subject.

3. Articles of Roup.

I shall give you the common form of the atticles and minutes of procedure in the sale, and afterwards such changes as most generally take place on the conditions under which public sales proceed.

> ARTICLES of ROUP and SALE of ALL and WHOLE (here the lands are to be described as in the dispositive clause of the rights). WHICH whole lands and others , and are belong in property to to be exposed to fale by public roup within coffeehouse in day of , betwixt the on the and, or at fuch other time and place as the fale shall be adjourned to by the judge of the roup, herein after named, in virtue of the powers hereby given to him.

FIRST, The faid lands and others are to be exposed to sale by public roup, during the running of a half-hour sand glass, and to be set up at the sum of Sterling; and the person offering the said upset price, in case of no sur-

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ther bidder, and in case of more bidders, the person making the last and highest offer, at the outrunning of the said glass, shall be preferred to the purchase.

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SECOND, In case several offers be made for the said lands and others, every subsequent offer shall exceed the former offer in the sum of at least; AND each offerer shall subscribe his offer, and by his subscription shall become bound for the sum offered, and in performance of the articles hereby incumbent on the purchaser.

THIRD, The purchaser's entry to the said lands shall be at the term of , and he shall have right to the rents and duties thereof from that term, and in all time coming.

Fourth, The price of the said subjects shall be payable at the term of next, and shall bear interest from the said term of AND the purchaser shall be obliged, within thirty days after the roup, to grant a bond, with a sufficient cautioner, wherein they shall become bound, jointly and severally, for payment of the price to the said and that at the term abovementioned, with interest as aforesaid, and a sisth part of the price of penalty, in case of sailure,

FIFTH, In case the person who shall be preferred to the purchase of the said lands, in manner foresaid, shall fail to grant bond and sind caution in the terms required in the preceding article, within the thirty days after the roup, the said proprietor shall have it in his power either to pursue the purchaser for implement of his bargain and payment of the price, or to pursue and insist against him for payment of the said penalty, and to expose the said subject anew, by roup or private bargain, as he may incline.

SIXTH, Upon a bond being granted by the purchaser, with a cautioner to the satisfaction of the seller, in the terms above specified, the said said sin his favours, containing an obligation to inseft, a se, vel de se, with a procuratory of resignation, precept of sasine, assignation to the write and to the rents, from and after the foresaid term of entry, and containing absolut warrandice against the said , with a exception of the current leases.

SEVENTH, The progress of the said land shall be delivered to the purchaser; and if, upo fearching the records, the purchaser shall discover any encumbrances affecting the said land

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EIGHTH, The purchaser shall be relieved of he cess and land tax payable for the said subects, on or before the 25th day of March next, nd of all minister's stipend, feu duties, and ther public or parochial burdens due at and preceding the faid term of , the purhaser being liable for the same in all time hereafter.

AND, LASTLY, is hereby appointed o be judge of the roup, with power to deternine all disputes that may arise relative thereto, action betwixt the exposer, purchaser, and other offerd, the rs, with power to declare who is the highest of the offerer, and, if necessary, to adjourn the roup obligation time to time, to make such alterations on rator he conditions of fale as shall be found necesary, and with power also to lower the upset rice. AND the faid , exposer of the ofolut aid subjects, the person who shall be preferred ith at the purchase, and the other offerers, BIND and OBLIGE themselves, their heirs and succesland ors, to fulfil these articles to each other, in so it as they are incumbent on them respectively, and that under the penalty of L., to be land baid by the party failing to the party performor willing to perform, and that over and

above performance: AND they CONSENT to the REGISTRATION hereof, and of the minutes of roup, decerniture of the judge, enactments and other proceedings to follow hereon, in the books of Council and Session, or other judges books competent, therein to remain for preservation, and that letters of horning on six days charge, with all other necessary execution, may pass hereon, in form as effeirs; and thereto they CONSTITUTE

THEIR PROCURATORS, &C. IN WITNESS WHEREOF, &C.

I am now to give you an example of the minutes of the procedure on the articles of roup, which will show you in what manner the circumstances that most commonly occur are to be expressed. I am to suppose, then, that there is an adjournment, and that the price is reduced before the sale takes place.

At EDINBURGH, the day of thousand seven hundred and ninety-seven years, and within the coffeehouse being the time and place appointed for the within mentioned roup to proceed,

In respect that no offerer has appeared, I judge of the roup, do hereby adjourn this sale

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At EDINBURGH the day of . The judge of the roup appoints the fale to proceed at the time and place foresaid, in terms of the foregoing articles, with the following variations thereon:

FIRST, That the upfet price shall be reduced to the sum of L., and that the purchase money, in place of being payable at the said term of , shall now be payable at the term of next, bearing interest from , and the terms of the bond within mentioned, to be granted by the purchaser, shall be so far altered.

SECOND, That the term of entry, in place of being at , shall be at the term of next.

THIRD, That the exposer shall pay the cess and other public burdens above specified, at the term of ; the person who shall be preserved relieving him of the same in all time thereafter. IN WITNESS whereof, these presents, written by within designed, are subscribed by the said , and by the judge of the roup, place and date foresaid, be-

fore these witnesses writer hereof. , and the faid

Signed by the exposer, by the judge.

Signed by the two witnesses.

Which DAT and PLACE last abovewritten, within the coffeehouse, in terms of the above prorogation, and of previous advertisements, the judge of the roup having ordered the articles of roup and the above minutes to be read over, and the same being done, a half-hour sand glass was set up, and the lands and others foresaid were exposed to sale, in terms of the preceding atticles, at the foresaid sum of

Signed by the judge,

Appeared A, B. writer in Edinburgh, who offered for the faid lands the fum of Signed by the offerer.

Appeared C. D., Esq., who offered for the faid lands the sum of .

Signed by the offerer.

(When there are many offers, they are not all taken down, for it often happens that two persons bid against each other for a considerable time, and then clerk

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then the last offer of each is sufficient. When the clerk is writing out their offers, the running of the sand glass is stopped.)

The faid A. B. offered the fum of Signed by the offerer.

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AND the faid A. B. being the last and highest offerer at the outrunning of the faid fand glass, he was preferred to the purchase by the judge of the roup. AND the faid purchaser does hereby ENACT, BIND, and OBLIGE himself, his heirs and fuccessors, for payment of the said price offered by him, with interest and penalty, in terms of the preceding articles and minutes, and to grant bond therefor with a fufficient cautioner, and to implement the whole other conditions prestable by him as purchaser, and that under the penalty within specified; AND he CONSENTS to the REGISTRATION hereof, alongst with the foregoing articles of roup, in the books of Council and Seffion, or other judges books competent, that letters of horning on fix days charge, and all other execution necessary may follow thereon, in form as effeirs; and thereto he con-STITUTES HIS PRO-CURATORS, &c. IN WITNESS WHEREOF, thefe

scribed by the said purchaser, and by the judge

presents, written by the said

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of the roup, place and day foresaid, in presence of these witnesses, and the said , witnesses also to the subscription of the offerers above named and designed, who in the course of the proceedings have signed these presents as offerers.

Variations on the form of the Articles.

r. It often happens that an estate may sell to greater advantage in parcels than together. When this is the case, it will be exposed to sale in lots, and the following changes will take place on the articles of roup:

FIRST, The foresaid lands and others are to be exposed to sale by public roup, during the running of an half-hour sand glass, in two lots. The FIRST LOT is to consist of the lands of (Here describe them). The SECOND LOT is to consist of the lands of , reserving power to the judge of the roup to reverse the order of the lots, and to set up the second first, if he shall think proper.

SECOND, The upfet price of the 1st lot shall be L., and of the 2d lot L.; and, in case of several offers for the said lots, each offer shall exceed the former in the sum of L.

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at least; and each offerer shall subscribe the offer made by him, and be thereby bound to implement these articles; and the last and highest offerer for each of the said lots, at the outrunning of the glass, shall be preferred to the respective purchases.

In place of article 7th in the preceding articles, the article will run in these terms:

SEVENTH, Along with the said dispositions there shall be delivered up to the purchasers of each of the said lots such of the title deeds as are peculiar to his respective lot; but such as are common to both lots shall be delivered up to the purchaser of the first lot, who shall be obliged to grant to the purchaser of the second lot an obligation to make the same furthcoming to him, his heirs and successors, at all times when they shall have use therefor, upon a receipt and obligation to redeliver the same.

Or this division of the estate may be expressed in this manner:

ed shall be set up to sale, either in one lot or in several lots; and if in one lot, then the upset price of the whole shall be L.; but if the said subjects shall be divided into different lots, the description of the lots and the upset price of each shall be fixed and specified by the judge

of the roup, in the minutes of procedure to follow hereon.

SECOND, The foresaid subjects, or in case of division into lots, each of the lots shall be exposed to sale during the running of an half-hour sand glass.

2. In the 3d article of the above form, the terms of the purchaser's entry is fixed; but it may happen that part of the estate is in the natural possession of the feller, and the situation may be provided for in this way. After fixing the term of the purchaser's entry, there will be an exception in these words: " And in regard that the faid proprietor is in the natural posses-, it is hereby provided that the fion of purchaser shall only have access to that part of the estate at the separation of the next crop from the ground; and the faid proprietor shall be obliged to pay to the purchaser the sum of , as the rent of his faid possession for the enfuing crop.

3. The 5th article provides for the confequence of the highest offerer's failing to find caution within the time specified; and it permits the proprietor to pursue for the penalty, and to expose the subjects of new: but this is sometimes differently managed, and failing the highest offerer, the sale is thrown upon the next

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highest offerer, and so on. This is done by ex-

FIFTH, In case the person who shall be preferred to the purchase, as last and highest offerer, shall fail to grant bond, and to find caution within thirty days of the roup, in terms of the preceding articles, the faid proprietor shall have it in his power either to purfue the purchaser for implement of the bargain and payment of the price, or to infift against him for payment of the penalty aftermentioned. AND t shall be further OPTIONAL to the said proprietor, EITHER to hold the faid lands and others himself, or of new to expose the same to sale, on to declare the fame to belong to the immediate preceding offerer; and in case of intimaion of the faid failure to find caution being made to the immediate preceding offerer, he hall be deemed the purchaser, and shall be obliged, within the space of thirty days after such intimation, to grant bond for the price offered by him, with a sufficient cautioner, in terms of these articles, under the like penalty, and so forth, through the whole other offerers.

Or this clause may be thus expressed:

FIFTHLY, In case the highest offerer for any of the said lots sail to find caution within the

forefaid space, then the next immediate preced. ing offerer is to be preferred to the purchase, he always granting bond with a fufficient cautioner for payment of the price offered by him, in the terms abovewritten, within thirty days after the failure of the next immediate highest offerer; and in case he likewise fail to find caution within the time limited, then the other of ferers to be preferred in their order, they find ing caution as faid is; and declaring, that if fuch failure and devolution of the purchase shall take place, the offerer or offerers so failing, and their heirs, shall be liable to the exposer and his foresaids for the difference betwixt the price offered by each respectively, and the next inmediate offer, as well as for the penalty aforefaid for not finding caution; intimation being always made of such failure to the immediate preceding offerer, within ten days after the purchase shall have devolved upon them respectively.

It may be confidered, in framing such a clause, whether the time be not too long so which the second highest offerer is to be held bound.

4. In place of article 7th in the above form it may be thus expressed:

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SEVENTH, Along with the faid disposition, here shall be delivered up to the purchaser the progress of writs of the said lands and others foresaid, conform to an inventory thereof subcribed by the proprietor, of the date of these presents, as relative hereto, and to be signed by the purchaser immediately after the roup, with which he is to rest satisfied. And it is hereby expressly declared, that the purchaser is to be inderstood to have satisfied himself before the oup with regard to the title deeds, and the usiness and exactness of the rentals, as he is not intitled to claim or be allowed any abatement or eduction whatever from the price, on pretence of any error, shortcoming, or overcharge there-

5. These include the changes on the articles ontained in the form which I have given you; but there are often other articles besides those which are contained in that form. Thus, there is an article, in regard to encumbrances, very common in articles of roup; it comes in after thicle 8th of the above form, in these words:

NINTH, In regard the exposer knows of no noumbrance affecting the said lands (or, if there e any, they will be excepted in this way: Other than an heritable bond affecting the said lands, granted by

"for the sum of L. , with the infestment following thereon, of which the said proprie." tor becomes bound to procure renunciation on payment of the price)." If the purchase shall incline to make a search of the records, it is hereby declared that said search shall be made entirely at their own expence, unless it shall appear from the said search that there are encumbrances affecting the said subject (or, if any have been mentioned, you will say, "other encumbrances affecting the said subject than "those above condescended on)," then the said proprietor shall be bound, not only to purge the same, but also to pay the expence of the said search.

6. Another article, which often precedes the last, is a submission of all questions that can arise from the transaction to an arbiter; it is thus expressed:

TENTH, In case any difference shall arise be twixt the seller and the purchaser, or betwix the purchasers of the different lots respectively concerning the subject matter of these articles and the execution or implement thereof, such differences, all and each of them, are hereby REFERRED to the amicable determination of

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themselves, their heirs and successors, to abide by and perform whatever the said arbiter shall determine.

When there is an article of this kind, it is proper to make the following addition to the clause of registration: "And of the decrees ar"bitral, one or more, to be pronounced by the "said arbiter, if any such shall be pronoun"ced."

7. The following article is often added before the clause consenting to submit: "The exposer "and purchaser shall pay equally betwixt them "the auction tax and auctioneer's fee, and also "the expense of a search of encumbrances, if "the same shall be required by the purchaser."

8. The changes which I have hitherto taken hotice of, are changes which are commonly to be met with in articles of roup, when the fale is made by the proprietor; but other changes will occur, when the lands are fold by a truftee; I mean, the case of a trustee under a voluntary trust. Thus, the title of the articles will run in these terms:

ARTICLES of SALE, &c. WHICH whole lands, and others abovementioned, belonged to B., and are to be exposed to fale by public roup within the coffeehouse, the

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day of , between the hours of and , by , his trustee, conform to trust disposition executed by him, in favours of him and the deceased; whom failing, to others there in named, dated , and recorded , in terms of the articles and conditions following:

In the article relative to the disposition to be given to the purchaser, it will be stated that the warrandice to be given is warrandice against the acts and deeds of the trustee, and a conveyance to the clause of absolute warrandice contained in the trust deed.

It often happens in these trusts, that an annuity is to be preserved to a widow, and in that case the following article will be inserted:

The purchaser is to retain the sum of of the purchase money, to answer an annuity of , payable out of the foresaid lands and others to ; but for which retained sum he shall within 30 days of the roup grant bond, with a sufficient cautioner, to the satisfaction of the exposer, payable to the said , in liferent, at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment of the interest of the

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faid retained fum at the term of Martinmas and the next half year's payment of the faid interest at Whitsunday thereafter, and so forth, half yearly and termly thereafter, during the lifetime of the faid, with the legal interest of the said termly payments from and after the same fell due, during the not payment, and which principal retained fum itself shall be payable to the faid ; whom failing, to trustees appointed by the faid trust deed, at the first Whitsunday or Martinmas after the death , with legal interest thereof of the faid from either of the periods immediately preceding her death; and the purchaser shall also, within the faid space, grant bond and caution as aforesaid for the remainder of the price of his purchase, &c.

II. OF THE DISPOSITION.

I am now to explain the form of the disposition to a purchaser, and I apprehend that I shall best attain my object by laying before you, in the sirst place, the simple and common form of this deed; and by pointing out, in the next place, all those changes which occur in the disposition to a stranger, arising from the cause of granting, the state of the titles in the person of the seller, the character under which he acts, or the conditions which the parties have agreed to admit into the deed. This will naturally lead us to the Third Head of which I mean to treat, the completing the title of the purchaser; and that being explained, I shall, in the last division, show you those varieties in the form of the disposition which arise from the nature of the estate conveyed. In this manner, I hope to leave no part of my subject untouched.

To proceed, then: The common disposition to a purchaser consists of the following clauses:

1. The narrative. 2. The dispositive clauses 3. An obligation to infest a me wel de me. 4. Procuratory of resignation. 5. Clause of absolute warrandice. 6. Obligation to free the subjects of cess, &c. 7. Assignation to the writs and rents. 8. Warrandice of this assignation. 9. Clause relative to the title deeds. 10. Clause of registration. 11. Precept of sasine, And, 12. Testing clause.

I A. Esq. heritable proprietor of the lands and others after disponed, IN CONSIDERATION of a sum of money paid to me by B., as the price of the said subjects, of which price I here-

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by grant the receipt, and discharge him for ever, HAVE SOLD and DISPONED, as I hereby SELL, ALIENATE, and DISPONE from me, my heirs and fuccessors, to and in favour of the said B., his heirs and affignees whomfoever, heritably and irredeemably, ALL and WHOLE (here the lands are to be particularly described from the title deeds), LYING within the parish of , WITH all right, title and inshire of terest, claim of right, property and possession, as well petitory as possessory, which I, my predeceffors and authors, heirs and fuccessors, had, have, or anywise may have, claim or pretend thereto in all time coming; IN WHICH LANDS and others foresaid, I BIND and OBLIGE me, my heirs and fuccesfors, to INFEFT and SEISE the faid B., and his forefaids, upon their own expence, by two feveral infeftments and manners of holding, one thereof to be holden of me and my foresaids in free blench, for payment of a penuy Scots in name of blench duty, at Whitfunday yearly, if asked only, and relieving me and my heirs of the duties and fervices payable to our superiors thereof; AND the other of the said infeftments to be holden from me, of my immediate lawful superiors thereof, in the same manner that I or my authors held, or might have holden the same ourselves, AND THAT either by

refignation or confirmation, or both, the one without prejudice to the other; AND for completing the faid infeftment by refignation, I hereby MAKE and CONSTITUTE

jointly and feverally to be my law. ful and irrevocable procurators for me and in my name, to appear before my immediate lawful fuperiors of the lands and others forefaid. or before their commissioners having power to receive refignations, and thereupon grant new infeftments, and there duly and lawfully, by staff and baton, as use is, to RESIGN and SURRENDER, as I by these presents RESIGN, SURRENDER, simpliciter UPGIVE, OVERGIVE and DELIVER all and whole the faid lands of and others, as the fame are described in the dispositive clause hereof, with all right, title, interest, claim of right, property and possession which I, my predecessors and authors, heirs and fucceffors, had, have, or can pretend thereto, IN THE HANDS of my faid fuperiors, or of their commissioners foresaid, IN FAVOURS, and for new infeftments of the fame, to be made and granted to the faid B. and his foresaids, heritably and irredeemably, in due and competent form, acts, instruments, and documents thereupon to take, and generally every other thing in the premises to do which I could have done myfelf, or which to the office of pro-

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curatory in fuch cases is known to belong, ratifying hereby and confirming whatever my faid procurators shall lawfully do, or cause to be done in the premises; WHICH LANDS and others above disponed, with this disposition thereto, and the infeftments to follow hereon, I BIND and OBLIGE me and my heirs, executors and fuccessors, TO WARRANT to the said B. and his foresaids, to be free from all burdens and encumbrances, and grounds of eviction whatever, at all hands and against all mortal: AND I ALSO BIND me and my foresaids, to free and relieve the faid B., and his forefaids, of the cess due from the faid lands on or before the 25th , and of the feu duties, minister's March stipend, schoolmaster's falary, and other public and parochial burdens exigible from the faid subjects at and preceding the said term of Whitfunday , the faid B. and his forefaids freeing and relieving me and my forefaids of the fame thereafter in all time coming: AND FURTHER, I hereby MAKE and CONSTI-TUTE the faid B., and his forefaids, my ceffioners and affignees NOT ONLY IN and TO the whole writs and evidents, titles and fecurities of the faid lands granted in favours of me, my authors and predecessors, and the whole clauses therein contained, with all that has followed or

may be competent to follow thereon; BUT AL so IN and To the rents and profits of the faid lands from and after the faid term of Whitfunday last, which is hereby declared to be the term of his entry to the faid fubjects, and in all time coming, SURROGATING hereby and SUBSTITUT. ING the faid B., and his forefaids, in my full right and place of the premises for ever; WHICH AS SIGNATION abovewritten I BIND and OBLIGHT myself and my foresaids to WARRANT as follows, viz. in fo far as concerns the writs and evidents, at all hands and against all mortal, and in fo far as concerns the rents from my own proper facts and deeds only: AND I have here with delivered up to the faid B. the title deeds of the faid subjects, conform to an inventory thereof, fubscribed of this date, as relative hereto: Anol CONSENT to the REGISTRATION hereof in the books of Council and Session, or other judges books competent, therein to remain for prefervation, and that all necessary execution may pass on a decree to be interponed hereto in common form; and for that purpose I constitute

MY PROCURATORS

&c.: AND FURTHER, I hereby DESIRE and REQUIRE you

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pass to the ground of the said lands, and there give and deliver to the said B., or his foresaids, heritable state and sasine, real, actual and corporal possession, of ALL and WHOLE the said lands and others, contained in the dispositive clause thereof, lying and described as aforesaid, AND THAT by delivering to the said B., or to his foresaids, or to his or their certain attorney or attorneys in his or their names, bearers hereof, of earth and stone of the ground of the said lands, and all other symbols usual and necessary; and this in nowise ye leave undone, WHICH to DO I commit to you jointly and severally my full power, by this my precept of sasine directed to you for that effect. IN WITNESS WHEREOF, &c.

The form of the disposition to a purchaser, which I have laid before you, is of the simplest kind; and, in explaining the changes that take place on this deed, I shall follow the order of the deed itself; and mark out those arising from the situation of the parties; from the cause of granting; with the other changes on the narrative; and so on through the other clauses of the deed.

^{1.} NARRATIVE, &c. In the first place, then, the seller is designed heritable proprietor, and in

the example which I have given, the feller was infeft in the subject, and was therefore entitled to be designed "heritable proprietor." But I shall suppose the granter to have been the heir of the person last infest; in place of calling him heritable proprietor, you would design him as heir of such a person who was heritable proprietor; and as, in that case, he could have no right to give a warrant of infestment, it becomes necessary that he should make up titles, in order that they may accrue to his disponee; and the power of completing these titles must be placed in the hands of the disponee. All this is attained by the following form.

1. Disposition where the Disponer has not completed his Titles.

deceased A., late merchant in Edinburgh, here table proprietor of the lands and others after disponed, IN CONSIDERATION (the deed goes on in common form, until you come to the obligation to infest, which is thus expressed): IN WHICH LANDS I BIND and OBLIGE me to procure mystelf, on my own expence, duly and lawfully served and retoured heir to my said father, and infest and seised in the said lands in due and competent form; and being thus vested in the

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complete feudal right of the said subjects, I FURTHER BIND myself, my heirs and successors, to insest and seise the said B. and his coresaids therein, upon their own expences, and that by two several insestments and manners of holding, &c.; AND for the purpose of expeding my said service, and obtaining me insest in the said subjects, and for completing the said insestment in savour of the said B. by resignation, I HEREET MAKE and CONSTITUTE jointly and

everally to be my lawful and irrevocable procurators, with full power to them to purchase rieves, and to obtain me ferved heir to my faid ather, to retour the faid fervice, and thereupon oraise precepts, and obtain me infest in the said ands; and to take every other necessary step or vesting in my person, by infestment, the comlete feudal right of the lands and others above disponed: AND FURTHER, with power to combear before my lawful superiors of the lands and thers above disponed, or their commissioners in heir names, having power to receive resignaions, and thereupon to grant new infeftments, AND THERE purely and fimply, by staff and baton, as use is, for me and in my name to RE-IGN and SURRENDER;" and fo on, in common orm. The precept of fasine begins thus:

" AND FURTHER, as if I were already infeft and feifed in the faid fubjects, then as now, and now as then, I hereby DESIRE and REQUIRE YOU."

If the disponer's ancestor was not infest, and died possessed of an unexecuted procuratory and precept, the disponer will by a general service carry right to thefe, and then in the disposition he will, in place of inferting a procuratory and precept, affign those to which he has right. The fame form will be observed, should the disponer have acquired right to an unexecuted procuratory and precept; and he will, in the disposition which he gives, infert a conveyance of these warrants of infestment. The deed will be in this form:

2. The disposition will contain an obligation to infeft the purchaser by two several infestments and manners of holding, in common form; but in place of a procuratory, the clause will end thus: " AND for that purpose I hereby BIND and OBLIGE myself and my foresaids to MAKE, SUBSCRIBE and DELIVER to the faid and his foresaids all necessary deeds; WHICH LANDS and others, &c. (The clause of warrandice and obligation as to public burdens in common form.) AND FURTHER, I hereby MAIL and CONSTITUTE the faid B. and his foresaids the case

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my cessioners and assignees, NOT ONLY IN and to the whole writs and evidents, titles nd fecurities of the faid lands, granted in . avour of me, my authors and predecesfors, with all that has or may follow thereon, AND without prejudice to the faid generality, IN and ro a disposition of the said lands and others, of late the , granted by ome (or, 'granted by to my deceafd father; to which, and to the unexecuted recuratory and precept therein contained, I have right by general fervice as heir to my faid father, dated , and duly retoured to e of chancery'), with the procuratory of refignation ill be and precept of fasine therein contained, THAT n virtue thereof, and of the procuratory of reignation or precept of faline therein contained, nd hitherto unexecuted, the faid may be infeft and feifed in the whole subjects bove disponed; But Also, IN and To the rents," Ac. (The deed will go on in the common style, with this difference only, that it will contain no recept of jasine.)

2. Disposition granted by Husband and Wife.

Other changes will arise from the nature of he granter's interests in the subject sold, as in he case of husband and wife. 1. When the

husband has the principal interest, and the will consents for her right, legal or conventional 2. When the wife is the proprietor, and the husband consents for his interest.

In the first of these cases, where the husband is proprietor, the wife may have a provision secur. ed by fettlement on the estate; or she may have a right of terce at common law, which, should the purchaser not be infest during the lifetime of the husband, would give her a preferable claim to a third part of the rents of the estate: Now, wherever the wife has an interest, as he is considered to be under the curatory of he husband, she must not only herself consents give up the right which she has, but her hul band must also consent to the act. This is the reason of expressing such a deed in the following terms:

"I, A. merchant in Edinburgh, heritable pro prietor of the subjects aftermentioned, with consent of E. my spouse, and I the said E., so and m all right of liferent, conjunct fee, terce, or other deed, in right or interest, legal or conventional, which to go o I have or can have in the faid subjects, will ous that consent of my said husband, and we both with mutual consent, IN CONSIDERATION, &c. HAT deed, a SOLD," &c. In the after clauses of the dee

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when the granters are mentioned, you will fay, "We the faid A. and E., for our respective inerests in the said subjects, and with mutual conent, in manner foresaid."

In the other case, where the wife is proprieor, the husband has not only an immediate ight to the rents of the estate, but an eventual one, of courtefy; he therefore ought not only o consent to the act of the wife, but regularly he should convey in his own name. The deed will be thus expressed:

I, E. heritable proprietor of the subjects aftermentioned, spouse of A. merchant in Edinburgh, with confent of my husband, and I the said A., or all interest that I have in the said subjects, N CONSIDERATION of the fum of &c., HAVE SOLD, &c.

I have to remark, with regard to the deeds executed by hufband and wife, and which proe proceed on a narrative of other deeds, that it is common to put down their different interests and mutual consent, at the beginning of the deed, in the manner above expressed, and then to go on to the narrative; although it is obvious that the expression of mutual consent has nothing to do with the confiderations of the deed, and ought to be directed to the dispositive

clause. It would therefore be better to express a deed of that kind in these terms:

3. We, A. merchant in Edinburgh, and E, spouses, considering, &c. (Here narrate all the deeds). And further, considering, &c. (Here state the consideration or cause of granting). Therefore, I the said A., with the consent of the said E. my spouse, and I the said E., for all right of liferent, conjunct see, terce, or other right or interest, legal or conventional, which I have or may have in the said lands, with consent of my said husband, and we both with mutual consent, have sold and disponsed, &c.

In both of these cases, that is, where the wise consents to the husband's deed, or where she disposes of her own estate with the consent of her husband, a ratification becomes necessary. This ratification is a judicial act, expressive of the wise's consent when out of the presence of her husband, and under the protection of a judge; and it has the effect of depriving the wise of all ground of reduction of the deed ratified on the head of force or fear. The wise appears in presence of a judge, with a procurator for the purchaser, a notary public, and two witnesses. The ratification, which has been previously made out on the back of the principal

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disposition, is read over; and, under an oath administered by the judge, she declares what is there stated to be true. The procurator takes instruments on this in the hands of the notary, and the ratification is signed by the wife, the notary public, the judge, and the two witnesses. The ratification is in this form:

4. AT EDINBURGH, the third day of April one thousand seven hundred and ninety-seven years, IN PRESENCE of Z. Esquire, one of the bailies of the city of Edinburgh, AND ALSO in presence of me notary public, and of the witnesses subscribing, COMPEARED personally the within defigned E., and in the absence of her husband, also within designed, she RATIFIED and APPROVED of the within written disposition, in the whole heads, articles and clauses thereof, AND DECLARED, that she was noways compelled nor feduced to concur in the fame, BUT THAT the did fo of her own free will, AND gave her great oath that she never would quarrel nor impugn the fame, directly or indirectly, any manner of way in all time to come, as she should answer to God: WHEREUPON , as procurator for the said disponee, within designed, asked and took instruments in the hands of me notary public. THESE THINGS were fo done,

place, day, month and year forefaid, before and in prefence of and witnesses to the premisses, specially called and re-

E. F. witness. J. J. witness. Z. B.

H. N. P.

3. Disposition by a Minor.

A disposition may be granted by a minor with confent of his curators, but it will be open to reduction on the head of minority and lesion. Where a fale of this kind is to be made, it should be by public roup, and the right ought not only to mention the precise price, but the application of the money: Thus,

7. I, A. B., heritable proprietor of the lands and others aftermentioned, considering that the faid lands were exposed to public voluntary roup on the day of , in virtue of articles of roup figued by me, with confent of my curators after named, and that L. M. having offered the fum of L. , was preferred as the highest offerer at the said roup, as the faid articles of roup and minutes of procedure thereon, all registered together in the books of Council and Seffion (office M. P.) the day of

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THER, CONSIDERING that, in terms of the faid articles, the faid price was to be applied in paying off the following debts due by my father, viz. (Here the grounds of debt will be mentioned); AND SEEING that the faid L. M. has, in implement of the obligation come under by him, applied the price in manner forefaid, and has now delivered up to me the grounds of debt abovementioned, discharged by the respective creditors therein; THEREFORE I, A. B., with confent of C. D. and E., curators appointed to me by F. B. my father, the majority of whom accepting and alive at the time are declared to be a quorum, by the nomination contained in a disposition granted by my said father, dated registered , have sold and DISPONED, as, in implement of my part of the faid articles of roup, I do hereby, with confent foresaid, SELL and

A pupil, or rather I should say, tutors in name of the pupil, cannot sell without a decree of the Court of Session. The narrative of such a deed will be seen in seu charters, No. 3.

4. By Heirs Portioners.

In the case of heirs portioners, there will be some little peculiarity in the form of the dispo-

fition. These heirs have not each a distinct right in the subject; on the contrary, they have a joint, or what is called a pro indiviso, right in the lands to which they succeed. A disposition granted by heirs portioners will be thus expressed:

We, A. and B., daughters and heirs portioners of the late , Efq., heritable and pro indiviso proprietors of the lands and others aftermentioned, IN CONSIDERATION (and fo on), SELL, ALIENATE and DISPONE from us, our heir and fuccessors, joint proprietors pro indiviso of the subjects, to and in favour of the said &c. In closing the description of the lands, you add, "With all right, title, interest, claim " of right, property and possession, which we " the said A. and B., as heirs portioners of our " faid father, and joint proprietors pro indiviso " of the subjects before disponed, or either of " us, our predecessors and authors, heirs and " fucceffors, have, had, or can claim or pretend " thereto, in all time coming. IN WHICH " LANDS we, as heirs portioners and joint pro-" prietors therein, pro indiviso, BIND AND 0-" BLIGE ourselves to inseft and seise, &c. And " for completing the faid infertment by refig-" nation, we, as heirs portioners and joint pro-" prietors in the faid subjects, MAKE and CON-

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" STITUTE," &c. And in every other part of the deed where the gran ers bind themselves, you will say, We, as heirs portioners and joint proprietors pro indiviso in the said subjects.

These observations, in regard to the granters of the disposition, will suffice, as the deeds executed by those acting for creditors will be afterwards taken notice of. I therefore proceed to the alterations on the disposition, proceeding from other causes.

When the disposition has been preceded by missives of sale, it will be thus expressed:

5. Disposition proceeding on Missives of Sale.

I, A. B. heritable proprietor of the lands and others after mentioned, considering, that by missives of sale of date the 3d March 1797, entered into betwixt L. M. Esq. and me, I sold to him the said lands at the price of 5000l. Sterling, payable at Martinmas next, and bearing interest from the term of Whitsunday preceding, and became thereby bound, against the said term of Martinmas, to deliver to him a formal disposition to the said subjects, with every necessary clause, to be holden in manner herein after mentioned, as the said missives containing other conditions, as expressed in this deed, in themselves

more fully bear; AND SEEING that the said L.M., in implement of his part of the said agreement, has granted a bond with as cautioner for the said sum of 5000l. Sterling, payable at the said term of Martinmas, and bearing interest from the term of Whitsunday next; THEREFORE, in implement of my part of the said agreement, I HAVE SOLD and DISPONED, as I DO hereby SELL, ALIENATE and DISPONE, to and in savours of the said L. M., his heirs and assignees whomfoever, heritably and irredeemably, &c. The amount of the seu duty, and of the public and parochial burden, will be fixed by the missives of sale. When a disposition proceeds on a minute of sale, it will be expressed in this manner.

6. Disposition proceeding on a Minute of Sale.

I, A. B., heritable proprietor of the lands and others aftermentioned, CONSIDERING, that by a minute of fale, of date the day of entered into betwixt L. M. Efq. on the one part, and me on the other, I SOLD and DISPONED to L. M., his heirs and affignees, heritably and irredeemably, the lands and others underwritten, and BOUND and OBLIGED myself, my heirs and successors, to grant and deliver to the said L. M. or his foresaids, a valid and formal disposition

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thereof in the terms of the present deed. For WHICH CAUSES, and ON the OTHER PART, the faid L. M. bound and obliged him and his forefaids to grant and deliver a bond payable at Martinmas next, with a fufficient cautioner, for the fum of L. 8000l. Sterling, being the price of the faid lands, with the legal interest thereof from and after the faid term of Whitfunday preceding, and one fifth part more of liquidate penalty in case of failzie. As ALSO, to pay the superior the feu duty, in the proportion herein aftermentioned, and to pay the cess, road money and schoolmaster's falary effeiring to the faid lands, according to the valued rent thereof, and one half of the stipend, teind, and vicarage payable out of my whole estate of . DECLARING. that if these public and parochial burdens should exceed 151. the faid L. M. should be entitled to an abatement of the faid price, effeiring to the excess, in the proportion that the price of 8000l. Sterling bears to 3151. 3s. 9d. Sterling, the free rent of the faid subjects. AND, on the other hand, if the faid burdens should fall short of the said sum of 151., the said L. M. became bound to pay an additional price, at the rate beforementioned, as the faid minute of fale, of date foresaid, in itself more fully bears. AND FUR-THER, CONSIDERING that the faid public and

parochial burdens, payable by the faid L. M. in confequence of the obligation on him and his foresaids herein after contained, will not amount to the faid fum of 15l. Sterling, and that by a state thereof made up, considered by us, and a. greed to be held as fixing this matter, it appears that the shortcoming on these burdens, according to the rate provided for by the above minute of fale, makes an addition of 10l. Sterling to the price of the faid lands, the price is therefore hereby declared to be 8010l. Sterling. AND SEBING that the faid L. M. has, alongst , as cautioner for him, in terms with of the obligation come under by him in the faid minute of fale, granted a bond to me for the faid fum of 8010l. Sterling, bearing interest from and after the faid term of Whitfunday next, and containing a fifth part more of liquidate penalty in case of failzie: THEREFORE, in implement of my part of the faid minute of fale, I have SOLD, ALIENATED, and DISPONED, &c.

A change will also be occasioned from the disposition's having proceeded on articles of roup. Of this I give the following instance, in which there is also a variation, arising from the situation of the parties. The proprietors were two heirs portioners; one of them was fatuous,

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and a person was appointed as her curator, and from her situation a warrant of sale became necessary. The articles of roup are therefore in the name of the sister who was in health, and of the curator for the sister who was deranged, under authority of a warrant given by the Court of Session.

7. Disposition on Articles of Roup.

1. I, A. fifter-german, and one of the two heirs portioners ferved and retoured to the deceased C., and I, L. curator ferved to B., also fiftergerman, and the other heir portioner ferved and tetoured to the faid C., but who is presently in a state of fatuity, conform to letters of cutatory in my favour, of date , expede before the sheriff of , and retoured to chancery , CONSIDERING, that in a process for a warrant to fell the lands and others after disponed, pursued before the Lords of Council and Seffion, at the instance of the said B., and of me the faid L., as her curator, against the faid A. and the creditors of the faid C., the faid Lords, by their decree and warrant, dated , (Here infert the precise words of the

, (Here insert the precise words of the decerniture authorising the sale.) AND the said lands and others hereby disponed having, by virtue of the foresaid decree and warrant, and

in terms of previous advertisements in the Edinburgh newspapers, been exposed to fale by pub. lic roup on the day of , within , by me the faid L., as coffeehouse in commissioner for A., conform to commission by her in my favour, of date , and as curator for the faid B. in manner forefaid, and that under certain conditions of fale subscribed by me, of date . And the faid lands being exposed, agreeably to the faid conditions, at the upfet price of L. , the same were purchased by M., who was the highest offerer at the outrunning of the fand glass, and as such was preferred to the faid purchase by the judge of the roup, at the advanced price of L. and by his enactment became bound (or, as it commonly happens that a man of business appears for the purchaser, when he is preferred he declares for whom the purchase is made; and by figning the enactment, binds the real purchaser; and in that case the articles will bear, "The fame were purchased by F., as highest " offerer therefor at the outrunning of the fand " glass, at the advanced price of L. " the faid F. having declared the faid purchase "to have been made for M., he by his enact-" ment bound the faid M. to grant bond)," to grant bond for the faid price, in terms of the

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faid articles, and to perform the whole other conditions thereby incumbent on him as purchaser, as the said articles of roup, and the minutes and procedure thereon, all registered together in the books of Council and Seffion more fully bear. AND the day of aid M. having accordingly granted bond, with a fufficient cautioner to the fatisfaction of the judge of the roup, for payment to me the faid A, and B. my fifter, of the faid fum of , with penalty and annualrents, at the term and upon the conditions specified in the faid articles, THEREFORE, I the faid A., and I the faid L. as curator for the faid B.,. proprietors of the lands and others hereby difponed, in implement of the obligations incumbent on us by the faid articles of roup, have sold and DISPONED, as we hereby SELL, ALIENATE and DISPONE, &c.

In the obligation to infeft, in the clause of warrandice, and in those clauses of the deed which infer an obligation on the seller, they will be expressed in this manner: "IN WHICH LANDS "I the said A. BIND and OBLIGE myself and "my foresaids, and I the said L. BIND and "OBLIGE the said B. and her foresaids, to insest "and seise;" and so on.

In the case of articles of roup, when the subjects are divided into lots, the title deeds are commonly lodged with the purchaser of the greater lot, who obliges himself to make them furthcoming to the purchasers of the others. This obligation is commonly subjoined to an inventory made out in the following terms:

2. INVENTORY of the progress of writs of the lands and estate of , holden of lying within the parish of and sherist dom of , lately belonging to C., and exposed to sale, under authority of a decree of the Court of Session, by A. and B., sisters of the said C., now deceased, and heirs portioners duly served and retoured to him.

Here the articles will be enumerated, and last of all the articles of roup; and the clause will be narrated (in describing that article) which relates to the keeping of the title deeds. The whole will be closed by the following doquet:

The foregoing inventory, confisting of articles, contains the whole title deeds of the lands and estate of , fold by public roup, in two separate lots, of which Nos. are the

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titles peculiar to lot 2d, and have been delivered up to M., the purchaser of that lot, alongst with the disposition in his favour, granted by the faid A. and L. AND SEEING that the arare common to both lots, and have ricles been delivered up to me Z., the purchaser of ot ist, Therefore I the faid Z. do hereby bind and oblige me, my heirs and fuccessors, to make he fame furthcoming to the faid M., his heirs and affignees whomfoever, upon all necessary occasions, in terms of the articles of sale abovementioned, and that under the penalty of L. besides performance; the faid M. and his foreaids granting me, upon these occasions, a receipt and obligation to redeliver them in the fame condition in which they were received, and within a time proportioned to the occasion for which they may be wanted, under the like penalty of L. . AND WE CONSENT to the RE-HISTRATION hereof in the books of Council and bession, or other judges books competent, theren to remain for prefervation, and to have the frength of a decree interponed thereto, that etters of horning on fix days charge, and all ther necessary execution may pass thereon, in form as effeirs; and thereto WE CONSTITUTE our procurators, &c. IN WITNESS WHEREOF, &c.

This deed will be extended on stamped paper, and be signed by the sellers and by the purchasers of lot 1st.

8. When the Price is rendered a Burden on the Disposition.

It may happen that the price, in place of being paid, is to remain on a bond, and this may either be mentioned, as in some of the examples I have given, or the narrative may state in general, that in consideration of a full price the disposition is granted; for in none of these cases does the circumstance of a bond having been granted constitute that bond a debt on the subject. When a burden of this kind is to be created, it must be done in the following manner.

I, A., heritable proprietor of the lands and others after disponed, IN CONSIDERATION of a bond granted to me of this date by B., for the sum of L. as the price of the said subjects payable to me, my heirs or afsignees, against the term of and bearing interest from the term of his entry to the said subject, have, under the express burden herein contained, soll and DISPONED, &c. ALL and WHOLE, &c. with all right, title, interest, &c. BUT DECLARING ALL

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pars, as it is hereby expressly provided and peclared, that the lands and others above specified, are hereby disponed with and under the express burden of the said sum of L. being the purchase money of the said lands and estate, with the interest of the said sum from and since the day of , and in time coming, and L.

of liquidate expences if incurred, payable to me the faid A. and to my foresaids, in terms of the bond above mentioned; AND WHICH SUM of L. interest falling due thereon, and L.

expressly declared to be a REAL BURDEN affecting the subjects before disponed, and which burden is hereby appointed to be engrossed in the infestments to follow hereon, and in all the sure transferences and investitures of the said ands, under this express condition, that those infestments in which this burden shall be omitted, shall be void and null; AND WHICH condition shall remain in force until the sums due by the said bonds shall be paid up.

In the procuratory of refignation, and in the recept of fasine, resignation will be ordered to be made, and infestment to be given to the said B. and his foresaids: "BUT ALWAYS with and under the burden of the said principal sum of L. interest thereof from this date, and

"L. of liquidate expences, if incurred, "as contained in the said bond, and under the "conditions above expressed;" and sometimes the man of business is so anxious that the whole condition is repeated in these clauses in the terms in which it enters the dispositive clause,

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of securities for a price, lands may have been given in consideration of a counter conveyance of other lands, but without intending to make an excambion, as in the following instance, when a person having purchased an estate that lay favourably for his superior received a right to his own superiorities on giving up the purchase. The narrative was thus expressed.

I, A., superior of the lands and others under written, considering that B. has relinquished and made over to me the lands and estate of purchased by him from the trustees

under the settlement executed by the late on condition of my relieving him of the prior thereof, and of my granting the disposition underwritten: THEREFORE I have SOLD and DISPONED, as I hereby SELL, &c.

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The variations on the narrative will sufficiently explain that part of the deed; the next clause that I shall take notice of is the clause of warrandice. The warrandice of this transaction, independent of all agreement, is absolute warrandice; warrandice at all hands and against all mortals; and this warrandice may either be increased or diminished at the will of the parties.

The terms of the common clause of absolute warrandice is that which is contained in the preceding form; but it may be raised by extending the warrandice to grounds of eviction posterior to the sale, against which the common clause of absolute warrandice would not secure the purchaser; or, on the other hand, the titles may be liable to objection, and the seller may not incline to hold out the title as a good one; in that case, the warrandice will be from sact and deed only, and will be thus expressed:

I. "AND I BIND and OBLIGE myself and my foresaids to WARRANT this present disposition to the said and his foresaids, from our own proper sacts and deeds, done or to be done by us, or either of us, in prejudice here-

"of." Besides these clauses of warrandica, there is a real warrandice arising from the conveyance of other lands in security of the principal lands; but that renders changes necessary on other parts of the deed; and I have on that account, as well as from the connection which it has with the warrandice of excambion, given an instance of that species of warrandice by itself.

In the common form of the disposition, the principal point to be attended to is the exceptions which it may be necessary to make from this clause: Thus, in the case of a seu, that must be excepted; even leases are excepted; but power is at the same time given to the purchaser to reduce the deeds, if they be reducible on any ground which will not involve the seller. This addition to the clause of warrandice is thus expressed:

"clause a seu right, of date the day of "granted by me in savour of : As also the whole current leases affecting the said sessate that it shall be in the power of the said B. and of his fore "saids, to quarrel or impugn the said deeds, of either of them, on any ground known in law

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3. Assignation to the Writs and Rents.

In the affignation to the rents, it may be thought proper, perhaps, to give a particular affignation to the leafes, by fuch a clause as this: " BUT ALSO, IN and TO the rents and profits of the faid lands, from and after the term of , which is hereby declared to be the faid B.'s term of entry thereto, AND IN and TO the current leases on the said estate, with the whole clauses and conditions thereof, and all that has or can follow thereupon, as the same are herein particularly described, viz., a lease granted by me to , of the farm of , being part of the lands hereby conveyed; which lease is dated the day of : Also a lease granted, &c. Surrogating and substituting the faid B. and his forefaids in my full right and place of the premisses for ever, with full power to him or them to use all diligence competent on the faid leafes, either in my name or in his

There is another case that may require still an addition to this clause: for, in order to en-

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able a purchaser, previous to his taking insest. ment, to remove a tenant who has no lease, this addition may be proper.

2. "AND FURTHER, I hereby empower the faid B. and his foresaids, to pursue and follow out, in my name, all actions of removing against the tenants and possessors of the said lands; and having obtained decrees in the said actions of removing, I hereby further empower them to use all necessary diligence in my name, for carrying the same into sull effect: AND I OBLIGATION me to give whatever surther aid may be necessary for this purpose; the expence of the said actions and diligence being desrayed by the said B. and his foresaids."

These observations explain most of the changes that will occur in the form of the disposition to a purchaser; and I am now to show you in what manner the title of the purchaser is completed, so as not only to secure him in the property of the estate, but to sulfil the intention of the deed, by placing him in the situation which the seller formerly held.

as herein particularly.

There is another case that may require still addition to this clayle: for, in order a en-

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III. OF COMPLETING THE PURCHASER'S TITLE.

1. Where the Lands hold of a Subject Superior.

The object of the disposition to a purchaser is not to create a fubaltern right, but to bring the purchaser into the precise place of the seller, entitling him to hold the subject of the seller's superior, in the same way that the seller himself held it. The purchaser's title, therefore, cannot be faid to be completed, until this has been attained. In practice, infeftment is taken on the disposition immediately on its being executed; indeed, regularly, infeftment ought to be taken before the price be paid, and the transaction concluded. For the intention of the records is to secure the purchaser; and it is only by seeing his right on record, and by bringing down the fearch to that period, that the records can afford him fecurity. If, therefore, parties were to gostrictly to work, the disposition should be executed by the feller, infeftment taken upon it, and these deeds retained by the feller until the price be paid by the purchafer.

I must therefore consider the infestment on the disposition in the first place, afterwards laying before you the means which the law has

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afforded to the purchaser for forcing an entry from the superior.

1. OF THE SASINE.

1. Instrument of Sasine on the Disposition to a Purchaser.

IN THE NAME OF GOD, AMEN. BE IT KNOWN TO ALL MEN by this present public instrument that upon the day of , in the year of our Lord , and in the reign of our Sove reign Lord George the Third, by the grace of God, King of Great Britain, France and Ire land, Defender of the Faith, the year, In PRESENCE of me notary public and witnesses subfcribing, APPEARED personally , as procurator for and in name and behalf of B., whole power of procuratory was fufficiently known to me the faid notary public, AND PASSED with , bailie in that part specially conus and stituted, by virtue of the precept of sasine after inferted, to the grounds of the lands and others aftermentioned, respectively and successively, HAVING and HOLDING in his hands the principal disposition, of the date underwritten, containing the precept of fasine after inserted, made and granted by A., heritable proprietor of the lands and others therein and after described, to

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and in favour of the faid B., WHEREBY the faid A., for the causes therein specified, sold, ALIE-NATED and DISPONED, to and in favour of the faid B., and his heirs and affignees whomfoever, heritably and irredeemably, ALL and WHOLE (Here the lands will be described as in the dispositive clause of the disposition), together with all right, title, interest, claim of right, property and possession, as well petitory as possessory, which the faid A., his predecessors or authors, had or anyways might have, claim, or pretend thereto, or to any part or portion thereof, as the faid disposition, containing an obligation to infeft, a me, vel de me, procuratory of refignation, dause of absolute warrandice, assignation to the writs and evidents, and rents, mails and duties of the foresaid lands, the precept of sasine above mentioned and after inferted, with fundry other clauses, more fully bears. WHICH DISPOSITION, containing the faid precept of fafine, the faid atorney presented to the said bailie, and desired him to proceed to the execution of the office of bailiary thereby committed to him, by giving asine to the said B. of the said lands and others, n terms of the said disposition and precept of asine therein contained; WHICH DESIRE the aid bailie finding to be reasonable, he received he said disposition into his hands, and deliver-

ed the same to me notary public subscribing, to be read and published to the witnesses and others present, WHICH I DID, and of which precept therein contained the tenor follows (Here the precept of fasine and testing clause are verbatim copied into the fasine, with the subscriptions of the granter and witnesses): AFTER READING and PUBLISHING of which disposition and precept of fafine therein contained and above inferted, the faid bailie, by virtue thereof, and of the office of bailiary thereby committed to him, GAVE and DELIVERED to the faid B. heritable state and fasine, actual, real, and corporal posses. fion, of ALL and WHOLE the lands and others above mentioned, lying and described in manner forefaid, and that by delivery to the faid procurator of earth and stone of the ground of the faid lands, and of all other usual and necessary fymbols, after the form and tenor of the faid disposition and precept of sasine above inserted, therein contained, in all points. WHEREUPON, and upon ALL and SUNDEY the premisses, the faid procurator asked and took instruments in the hands of me notary public subscribing THESE THINGS were fo done on the grounds of the faid lands, respectively and successively, betwixt the hours of and of the day, month, year of God, and of the King's reign respective

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ly first abovewritten, before and in presence of and , witnesses to the premisses specially called and required, and hereto with me subscribing.

2. Alterations on the Form of the Sasine.

The alterations which take place upon the instrument of sasine, following on the disposition to a purchaser, shall be shortly stated.

1. Where the price is made a burden on the subject (see p. 176.), the disposition will be thus narrated in the sasine:

HAVING and HOLDING in his hands the principal disposition, of the date underwritten, containing the precept of fasine after inserted, made and granted by A., Esq., heritable proprietor of the lands and others therein and after described, to and in favours of the faid B.; whereby the aid A., in consideration of the said B.'s becoming bound to pay him the fum of , as the price of the subjects therein contained, and in confideration of the real fecurity thereby referved, SOLD, ALIENATED, and DISPONED, TO and IN favours of the faid B., his heirs and affignees whomsoever, ALL and WHOLE (Here the lands are described): But DECLARING AL-WAYS, as it is thereby expressly PROVIDED and DECLARED, that the lands and others above deof the said sum of Sterling, being the price agreed to be paid by the said B., with INTEREST thereof from the term of , being the term of the said B.'s entry to the said subjects, with a fifth part of the said principal sum of PENALTY, as contained in a bond granted by the said B. to the said A., of the date of the said disposition; UNDER WHICH CONDITION the said right is DECLARED to be granted, and to be accepted of by the said B., and not otherwise: AND WHICH principal sum of

, interest to fall due thereon, and a fifth part more of penalty, as contained in the faid bond, is thereby declared to be a real burden affecting the faid lands and others above disponed, and is thereby appointed to be engroffed as a burden on the infeftments to follow thereon, and in all the future transmissions and investitures thereof, and that until complete payment be made of the faid fums, in terms of the faid bond, as the faid disposition, containing an obligation to infest a me, vel de me, procuratory of resignation, clause of absolute warrandice, affignation to the writs and to the rents of the faid lands, precept of sasine above mentioned and herein after inferted, with fundry other clauses, more fully bears: WHICH DISPOSITION, containing the

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faid precept of fasine, the said attorney (and so on in common form, till you come to), GAVE and DELIVERED heritable state and safine, actual, real, and corporal possession to the said B., of ALL and WHOLE the lands and others abovementioned, lying and described in manner foresaid; BUT UNDER the BURDEN always of the said sum of L. of principal, interest due thereon from the said term of , and a fifth part more of penalty, if incurred, all as contained in the said bond; UNDER WHICH express burden this infestment is given and to be received by the said B., and not otherwise, AND THAT by delivery, &c.

2. When the disponee has right by affignation to an unexecuted precept of saline.

You proceed in the common form till you come to narrate the warrants. The disposition containing the precept is not a disposition to the purchaser, but it has been granted by a former proprietor to the seller, who has assigned the unexecuted precept to the purchaser; you therefore, first of all, narrate this disposition in the common way: Thus,

"HAVING and HOLDING in his hands a difpolition, of the date aftermentioned, and containing the precept of fasine after inserted, made

and granted by L. to A., whereby the faid A. SOLD, ALIENATED, and DISPONED (and fo on, in common form; and after narrating this difposition, you narrate the disposition contain. ing the affignation in favour of the purchaser, who is to be infeft in this way): AND ALSO HAVING and HOLDING in his hands a disposition, of date the day of , made and granted by the faid A. to the faid B., where. by, for the causes therein specified, he sold, ALIENATED, and DISPONED, to and in favour of the faid B., his heirs and affignees whomfoever, heritably and irredeemably, ALL and WHOLE the lands and others particularly above described, with all right, title, interest, claim of right, property and possession, petitory or polfessory, which the faid A. or his predecessors or authors, heirs or fuccessors, had, have, or may claim or pretend thereto in all time coming, as the faid disposition, containing an obligation to infeft a me, vel de me, clause of absolute warrandice, affignation to the writs and evidents, and in particular to the disposition above mentioned, and to the precept of safine therein contained, and hitherto unexecuted, with all the usual and necessary clauses, in itself more fully bears: Which disposition above mentioned, in favour of the faid A., and containing there-

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in the precept of fasine, with the disposition last above mentioned, the faid attorney presented to the faid bailie, and defired him to proceed to the execution of the office of bailiary committed to him by the faid precept of fasine, by giving fasine to the faid B. of the faid lands and others, in terms of the faid precept of fasine, to which the faid B. has right, in manner forefaid: WHICH DESIRE the faid bailie finding to be reafonable, he received the faid two dispositions into his hands, and delivered both of them to me notary public fubscribing, to be read and published to the witnesses and others present, which I did, and of which precept contained in the disposition first above mentioned, the tenor follows, in these words (Here copy in the precept of fasine, testing clause, and the subscriptions of the granter and witnesses): AFTER READING and PUBLISHING of which dispositions, viz. of the disposition by the said L. to the faid A., with the precept of fasine herein contained and above inferted, and of the aid disposition by the said A. to the said B., by which he conveys to him the faid unexecuted precept of sasine, the said bailie, by virtue of the faid disposition and precept of sasine sirst bove mentioned, and of the office of bailiary thereby committed to him, GAVE and DELIVER-

ED to the faid B. heritable state and sassine, actual, real, and corporal possession, of ALL and WHOLE," &c. (The remaining part of the informent is in common form.)

3. Where the disponee has right to an unexecuted precept of sasine, including other subjects besides those conveyed to him.

In this case there is nothing to prevent the proprietor of an estate, possessed of an unexecuted precept, when he sells part of the estate, from conveying to the purchaser the unexecuted precept to the extent of his purchase; and the purchaser taking insessment on the precept does not exhaust it, in so far as it relates to the other parts of the estate; for, with regard to these, it remains an essectual warrant for a sasine. In the disposition, the conveyance to the precept will be restricted by these words: "To the extent of the subjects hereby sold;" and the changes on the preceding form, by referring to this restriction, must be very obvious.

4. Where the person inseft has acquired right to the precept by a general service.

Where a purchaser dies uninfest, his heir, by a general service, will carry right to the unexecuted precept of sasine, and, in virtue of his fervion.
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fervice, may be infeft on his ancestor's disposition. In this ease, after narrating the disposition in the same manner as in the preceding examples, you proceed thus:

As ALSO, HAVING and HOLDING in his hands the RETOUR of the general fervice of the said as nearest and lawful heir to the said, his sather, expede before the and duly retoured in his Majesty's chancery, whereby the said has acquired right to the soresaid disposition, and to the precept of sasine still unexecuted, and whole other clauses therein contained, as the retour of the said service in itself more sully bears; WHICH DISPOSTION, with the said precept of sasine therein contained, AND the said RETOUR, the said attorney presented, &c., in the form of No. 3.

3. Remarks on the Effects of the Safine.

The infeftment being thus taken on the difpolition, the purchaser is secured against the acts
and deeds of the seller, at the same time that
he has it in his power to render his right a public one, holding of the seller's superior. This
effect is so fixed in modern practice, that the
principle of it is overlooked, and almost forgot-

ten. A vaisal may either constitute a base right, to be held of himself, or he may convey the lands to be holden of his superior; and our common disposition binds the feller to do both: He is taken bound to infeft the purchaser, to be held of himself blench, or to be held of his superior, in the same way, and for pay. ment of the same duties and casualties, that he himself holds the subject. To carry this obligation regularly into execution, the feller ought, according to the genuine principles of feus, to give a precept of fasine for infefting the purchaser to be holden of the seller; and, in order to complete the public holding, he ought to grant a procuratory of refignation for refigning the subjects in the hands of the superior, for new infeftments by the fuperior to the purchafer; and he ought also, in order to give the purchaser the option of a public right by confirmation, to grant another precept of fafine for infefting the purchaser to be holden of the seller's fuperior. This was the ancient form, as I have already explained to you in the history of the disposition; and, that we may distinguish properly betwixt the ancient and modern practice, I shall suppose infestment to have been taken on precepts of fasine such as I have described, that we may fee fully the effects of fuch rights

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Had fasine been taken on the first of these precepts, granted for the express purpose of infesting the purchaser to be holden of the seller, then the fasine must have been restricted to that fole effect,—it could have created only a base right, holden of the seller blench, in terms of the disposition. It would thus have carried to the purchaser the property of the subjects, it would have fecured him against the acts and deeds of the feller, in fo far as that base right extended; but it could have gone no farther, and no act of the fuperiors could have raifed it into a public right. This last consequence evidently follows from the nature of the infeftment; it is given for the express purpose of creating a base right holden of the seller as immediate fuperior. The feller's fuperior has therefore no title to alter that right, and to take from his own vaffal (the feller) this subvaffalage which he has thought proper to constitute. The confirmation by the feller's fuperior of this base right would therefore have no other effect than to deprive himself of the non-entry duties and cafualties which otherwife would have fallen by the death or delinquency of his immediate vaffal, the feller. All this naturally follows from the terms of the rights.

Aa 2

I am next to suppose, that, in place of taking infeftment on this precept of fafine, granted for infefting the purchaser, to be holden of the feller, the purchaser takes infestment on the other precept, given for infefting him, to be holden of the feller's fuperior. What right would the purchaser have acquired by that infeftment? Now, this precept is, no doubt, a warrant for giving infeftment to be holden of the feller's fuperior; but what authority has the feller to give that warrant? He has evidently none; therefore, the infeftment following on this precept has originally no effect whatever; it literally carries nothing, and it is only by the confirmation of the superior that it is raised into existence. His confirmation gives authority to the warrant of his vassal; and, being thus fanctioned, it comes to be confidered as if the infeftment had flowed originally from the fuperior's authority, and so carries a right to the subject holden of this superior.

Such is the nature of these two rights. The one gives an immediate title to the property, but carries no right to the superiority. The other carries no right whatever, either to property or superiority, until it has been confirmed by the seller's superior, after which it carries a right to both estates; and therefore of old purchasers

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took infeftments on both precepts, by that means carrying the property at the same time that they out themselves in a situation to settle with their superiors. Modern practice has united these advantages in one fasine; and it is attained in this fimple manner: In place of faying, as of old, that infeftment is given to the purchaser, to be holden of the mediate fuperior; or to be holden of the feller, the immediate fuperior; there is no notice whatever taken of the holding, or of the purpose for which the fasine is given (as you will observe in the precept of the modern disposition), it is left perfectly general; fasine is simply ordered to be given. Neither does the instrument of fasine tie down the infeftment to the one kind or to the other; and hence it has come to be received as a base infeftment, carrying the property of the lands to the purchaser as long as he remains unentered with the fuperior; and, from the moment that he enters with the superior, then the presumption changes, and from that circumstance it is inferred, that the sasine was from the first a public one, confirmable by the superior; and accordingly the public right is drawn back to the date of the fasine. Such is the change introduced by expediency, fanctioned by the decisions of the Court in the end of the last century, and now firmly established in modern practice.

This explains the nature of the purchaser's right while it remains on the disposition and fasine, the forms of which I have already laid I now proceed to the means by hefore you. which this right may be rendered public; and there are two methods, the one by obtaining the purchaser's confirmation of the sasine sollowing on the disposition; the other, by resign. ing the lands in virtue of the procuratory of refignation in the disposition, obtaining a charter of refignation from the superior, and taking infeftment on it. Of these methods of entry with the fuperior, the one may be called the voluntary, and the other the legal entry; fince it is by refignation only that the superior can be forced to give an entry to the purchaser, though in practice, the voluntary entry is as often made in the one way as in the other. Thefe methods I shall consider separately; and, having already laid before you the fafine on the difpofition, I shall first take the entry by confirma tion.

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2. OF THE CHARTER OF CONFIRMATION.

. Of the History of the Charter of Confirmation.

The title by confirmation is of a very anonalous nature; it depends upon the vasfal's isposition, upon the authority which he there ives for an infeftment to be holden of the fuerior, upon the infeftment following on this uthority, and upon the act of the superior, by which he fanctions the deed of his vasfal, and mites and gives effect to the whole. Thus the varrant is originally given by the vasfal, who as no authority to give fuch a warrant, and it s confirmed by the superior, who, without the affal's refignation, has as little right to grant uch a warrant; fo that, on feudal principles, his confirmation ought to give no right to the purchaser: All that can be said for it is, that hose who have any interest in the estate have, n one way or another, expressed their conent, and so clubbed out a right amongst them.

Strange as all this must appear, it is still the nore remarkable, when we recollect that, at he very time when this anomalous right must have been introduced, we possessed in the re-

fignation a natural and complete form by which the purchaser might regularly and on feudal principles have held the lands of the superior.

These considerations have induced Mr. Ross, with great plausibility, to attribute this form to the act of Robert I. st. 2. c. 25. proprietors both of this country and of England feem, in the beginning of the 14th century, to have felt great inconveniences from the fubinfudations or fales made by their vallals. In England, the statute " quia emptores terrarum" enacts, that in future, vaffals were to difpose of their feus, only, on condition that they should make the purchaser hold of the seller's fuperior; and, in that country, the effect of the act has been to confirm the deed of the vallal and to complete the right of the purchaser, with out the necessity of any act on the part of the fuperior. The statute itself has been held to confirm the right, and, from the moment of its enactment, there has been no new infuda-Blackstone says expressly, that all ma nors are held to have existed prior to that pe riod.

It was by the act of Robert I. that a similar regulation was introduced into our law; and it was not unnatural, when a sale was made for the purchaser, in obedience to this act, to

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have adopted the form of the charter a me, by which he conveyed the lands, to be holden, not of himself, in the old form of conveyance, but of his superior. The writers on English conveyancing show us that this was precisely what happened in consequence of their statute *: "Formerly," fay they, "the holding was of " the feller and his heirs, and not of the fupe-" rior; fubsequent to the act, the holding has " been of the lord of the fee, by the fervices " under which the feller held." The terms of it, we are told, were " Tenendum de capitalibus " dominis," &c., though now it has come to be altogether omitted. It is not without reafon, then, that Mr. Ross has attributed to this flatute of Robert I. the charter a me; and we hall find an additional argument for this opinion in the forms of our burgage deeds.

2. Of the Form of the Charter of Confirmation.

The charter of confirmation confifts, 1. Of the address to all and sundry. 2. Of the clause of confirmation, containing an account of the deed tonfirmed. 3. A dispensation with all defects. 4 The tenendas. 5. The reddendo. 6. The

Wood's Theory of Conveyancing, 3d edit. c. 5. § 4. (B.) (C.)

clause salvo jure cujustibet. 7. The clause of registration. 8. The testing clause.

KNOW ALL MEN by these presents, THAT I, L. M., Efq. of , immediate lawful fupe rior of the lands and others underwritten, IN CONSIDERATION of a certain fum of money paid to me by C. D., whereof I acknowledge the receipt, have RATIFIED and APPROVED, as I hereby RATIFY, APPROVE, and for me, my heirs and fuccesfors perpetually CONFIRM, A DISPOSI-TION, bearing date the day of , made and granted by A. B.; WHEREBY, for the causes therein specified, the said A. B. sold, ALIE-NATED and DISPONED, to and in favour of the faid C. D., his heirs and affignees whomsoever, heritably and irredeemably, ALL and WHOLE (here describe the lands as in the disposition); as the faid disposition, containing an obligation to infeft a me or de me, with precept of safine, and other usual clauses, more fully bears; 70-GETHER ALSO with an INSTRUMENT of SASINE following thereon, in favour of the faid C. D., dated , and recorded in the register of the day of , or of whatever other dates, tenor or contents the faid writings may be, IN the WHOLE HEADS, articles, clauses, tenor and contents of the same, with all

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that has or is competent to follow thereon : AND FURTHER, I hereby WILL and GRANT, and for . myself, and my heirs and successors, DECERN and ORDAIN, that this present confirmation shall be as valid and effectual, to all intents and purpoles, as if the writs before confirmed had been engroffed herein, or as if this confirmation had been made before the taking of the faid infeftment; WHEREWITH, and with all objections that may lie against the validity of the said deeds, or of this confirmation, I, for myfelf and my foresaids, have for ever dispensed, TO BE HOLDEN, the lands and others before described, under me and my heirs and fuccessors, immediate lawful superiors thereof, in feufarm, fee, and heritage for ever: GIVING therefor yearly the faid C. D. and his foresaids, to me and my foresaids, immediate lawful superiors of the same, THE SUM POUNDS STERLING, in name of feufarm duty, at two terms in the year, Whitfunday and Martinmas, by equal portions, AND DOUBLING the faid feu duty the first year's entry of each heir to the lands and others foresaid, AND THAT for all other burden, exaction, demand, or fecular fervice whatever, saving and RESERVING the bygone and current feu duties of the said lands, in so far as the same are not paid, AND SAVING my right, and the rights of all others concerned:

AND I CONSENT to the REGISTRATION hereof in the books of Council and Session, therein to remain for preservation; and thereto CONSTITUTE my procurators, &c. IN WITNESS whereof, &c., in the common form of the testing clause.

3. Variations on the Form of the Deed.

In place of arranging under separate heads the changes to which the charter of confirmation is liable, and which depend in a great degree on the conditions of the original seudal grant, I shall add another form of this charter, which seems to include most of the changes that can occur; and will show in what way this deed is to be formed. I must observe, however, that the most material thing is to show clearly that the progress in the person of the vassal is complete; and therefore you ought to trace it from the person last infest, holding of the superior, till it comes into the person of the vassal in whose favour the charter is granted.

KNOW ALL MEN by these presents, THAT I, A. immediate lawful superior of the lands and others aftermentioned, AND THAT I, Z., as having acquired right from the said A. to the

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liferent of the superiority of the lands after mentioned, have RATIFIED and APPROVED, and do hereby RATIFY, APPROVE and CONFIRM, a DISPOSITION bearing date the day of granted by C., the original vasfal in the lands aftermentioned, to and in favours of B., WHERE-BY he SOLD and DISPONED to and in favour of the faid B., his heirs and affignees whomfoever, heritably and irredeemably, ALL and WHOLE (here the lands are described as in the disposition); BUT UNDER certain conditions therein and aftermentioned; AND the faid disposition contains an obligation to infeft the faid B., either a me or-de me, with procuratory of refignation, precept of fasine, and all the usual and necessary clauses, As ALSO an INSTRUMENT of SASINE following on the faid disposition, in favour of the faid B., dated , and recorded in the register of fafines the day of , or of whatever other dates or tenor the faid deeds may be, IN the WHOLE HEADS, articles, clauses, and contents of

WHOLE HEADS, articles, clauses, and contents of the same, with all that has or is competent to follow thereupon: As ALSO, we do hereby RATIFY, APPROVE, and CONFIRM a DISPOSITIOM bearing date the day of , granted by E., who stood last publicly infest under me in the lands after specified, as heir to his father D., the original vassal in the said lands, WHEREBY he

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SOLD and DISPONED to F., his heirs and affig. nees whomfoever, heritably and irredeemably. ALL and WHOLE (here the lands will be particularly described); BUT UNDER certain conditions therein and after expressed; IN WHICH lands the faid E. bound himself to infest the said F., either a me or de me; and for that purpose the disposition contains procuratory of resignation and precept of fasine, with other usual and neceffary clauses; AND ALSO a DISPOSITION and ASSIGNATION, of date, granted by G., the eldest fon and heir of the said F., to and in favour of the faid B., WHEREBY he SOLD and DISPONED to him, his heirs and affignees whomfoever, heritably and irredeemably, ALL and WHOLE the lands and pertinents last above described, and contained in the disposition by E. to F., IN WHICH lands he became bound to infeft the said B. either a me or de me, and for that purpose he affigned to him the unexecuted procuratory of refignation and precept of fafine contained in his father's disposition, to which he had acquired right as heir ferved and retoured to his faid father, conform to a general fervice duly retoured to chancery, of date ALSO an INSTRUMENT of SASINE following on the said precept so assigned, in favour of the said , OR of what-B., of date, recorded

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ever other dates, tenor, or contents the faid difpositions and sasines may be, IN THE WHOLE heads, articles, and clauses thereof, with all that has or may follow thereupon, but with and under the refervations and conditions therein contained, and herein after inferted; DISPENSING with the generality of the above confirmations, AND DECLARING that the fame shall be as valid and effectual, to all intents and purposes, as if the writs before confirmed were all and each of them herein verbatim engrossed, or as if this confirmation had been made before the taking of the infeftment abovementioned; wherewith, and with all objections that may lie against the validity of the said deeds, or of this confirmation, I. the faid A., for myfelf, and for my fuccessors in the faid lands and estate, and I, the said Z., for my right and interest, have for ever dispenfed, TO BE HOLDEN, the faid lands of first abovementioned by the said B. and his foresaids, of and under me the said Z., in liferent, during the sublistence of my right of liferent, and of me the faid A. and my foresaids, in fee; AND AFTER the dissolution or extinction of the said right of liferent, TO BE HOLDEN of and under me the faid A. and my forefaids immediate lawful superiors thereof, in feufarm, see, and heritage, by all the righteous meiths and marches

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thereof, &c.; BUT always under the exception and refervations after written; AND ALSO TO BE HOLDEN, the foresaid lands last above de. fcribed by the faid B. and his foresaids, in the fame manner, of and under me the faid Z., in liferent, during the sublistence of my liferent right of fuperiority, and of and under me the faid A. and my forefaids, as fiars, in feufarm, fee, and heritage for ever, civing yearly for the lands first above described, the said B. and his forefaids, to us for our respective rights and interefts, and to the heirs and fucceffors of me the faid A. in the fee of the faid lands, the feu duties and others after specified (here enumerate them), AND to be DOUBLED the first year of the entry of each heir to the faid lands, as use is in feufarm: As ALSO, the faid B. and his forefaids carrying their whole grindable victual yearly to the mill of

, being that mill of the barony to which the faid lands are thirled, and paying the 17th peck of shealing for the multure, with the usual and customary bannock and knaveship, and performing services to the said mill and dam thereof, according to use and wont; As ALSO, answering, when lawfully summoned, at the courts of the said barony, to be held at the manor place, or upon the ground of any part of the said barony, in terms of law; AND ALSO bears

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ing a share of the whole legal and public burdens imposed or to be imposed on the said barony, in proportion to , which, by the faid original charter of the faid lands, was the agreed valued rent thereof, in all time thereafter; Ex-CEPTING only the stipend and communion elements then paid to the minister of the said parish, whereof the faid lands are to bear no share. AND THESE for all other burden or fecular fervice which can be required furth of the faid lands; AND GIVING yearly, the faid B. and his abovewritten, to us and our foresaids, for our respective rights and interests, for the lands last above described (in terms of the reddendo of the original charter of that part of the lands); BUT RESERVING to the faid B. and his forefaids relief from the other heritors or feuers of the faid lands originally feued to the faid D., of a proportional part of the faid feu duty and public burdens pro rato; SAVING and RE-SERVING to us the bygone and current feu duties of the faid whole lands, in so far as they have not been paid, AND SAVING our right and the right of all others concerned; AND PARTI-CULARLY RESERVING to me the faid A. and my foresaids, ALL and SINGULAR mines of gold, filver, copper, tin, lead, coal, and other metals and minerals what soever which are in the said lands, ex-

Cc

cepting only stone and lime, and quarries thereof which are to belong to the faid B. and his fore faids, as disponed to him by the faid C .: AND DECLARING hereby, that it shall be lawful to me the faid A., and my forefaids, to fearch for and carry away the foresaid metals and mine rals hereby referved, and to use so much of the grounds of the forefaid lands as shall be require ed for these purposes, WE always SATISFTING the faid B. and his foresaids for the loss and damage which he or they shall thereby sustain; RESERVING ALSO full power to SELL OF DIS-PONE the fee or liferent of the superiority of all or any part of the above lands and other foresaid, at pleasure, and to different persons; AND GENERALLY to use and exercise every power and faculty of superiority over the faid lands and others foresaid, without the advice or confent of my present or future vassals, in the fame manner as if the two foresaid feus or parcels of land had not been contained in one charter, BUT THAT different and distinct rights had been granted for each. AND WE, for our respective right of liferent and fee, CONSENT to the REGISTRATION hereof in the books of Selfion, therein to remain for preservation; and our procura thereto constitute tors, &c. IN WITNESS WHEREOF, &c.

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In the above example, the second parcel of lands was part only of what had been originally seued out; and yet the whole seu duty contained in the original seu charter is inserted in the reddendo of this confirmation; and to do justice betwixt the vassals, you will observe that there is a claim of recourse preserved to him by the above form against the other vassals in the original seu. Were the superior, in place of inserting the whole seu duty, to insert that proportion only which this vassal had agreed to to pay, still he would preserve a power of exacting the whole, and the reddendo of the charter of confirmation would run in these terms:

"GIVING therefor yearly, the said B. and his foresaids, to us and our foresaids, according to our respective interests, the sum of L. Sterling of seu duty, being a proportional part of the sum of Sterling, which was the seu duty payable by the said original seu charter, in savour of D., for the said whole lands, of which the parcel last above described is only a part, and that at two terms in the year, Whitsunday and Martinmas, by equal portions, with a sist part more of penalty in case of failure, poubling the said seu duty at the entry of each heir, as use is in seusarm; but reserving al-

ways full power to us and our abovewritten. fuperiors of the faid fubjects, to exact full payment from the faid B. and his foresaids of the whole yearly feu duty payable by the faid original feu charter in favour of D., in like manner as if there had been no division of the faid feu duty: But DECLARING, that when we or our foresaids shall insist for full payment of the entire feu duty from the said B. and his forefaids, we shall be obliged to affign to him or them, at their expence, all right competent to us against the proprietors of the remaining part of the faid feu, in order that the faid B. and his foresaids may the more readily operate their relief against the said proprietors: AND FURTHER DECLARING, that if we or our foresaids shall allow the faid total feu duty to remain unpaid by the different feuers for the space of one year after the respective terms of payment thereof, THEN, for the years in which that neglect shall happen, the said B. and his abovewritten shall be liable for no more than the faid fum of L. being the proportion of the faid feu duty payable by him in manner foresaid, AND THESE for all other exaction," &c.

This form of the charter of confirmation is often, in completing the title of a vassal, joined

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with the charter of refignation or the precept of elare conflat. These combinations will be afterwards taken notice of.

It is this confirmation, where no mid impediment has intervened betwixt the date of the charter and the date of the fasine confirmed, which renders the right a public one, places the purchaser in the situation of the seller, and completes the disposition.

3. OF THE CHARTER OF RESIGNATION.

Refignation affords the other means by which the purchaser may complete his disposition. It is this which I have called the legal entry, because it is under the form of resignation only that a purchaser can force a superior to give him an entry. I shall therefore, in the first place, lay before you the steps by which this is attained.

1. Means of forcing an Entry.

Prior to the act 20th Geo. II. c. 50., a purchaser had no direct means by which he could have forced an entry; and even an heir could obtain his entry only by three consecutive precepts; and if the superior still remained obsti-

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nate, by obtaining a precept for charging the next immediate superior to receive him, until he came to the Crown, who is paramount fu perior, and refuses no vassal. By this act, the fituation both of the heir and of the purchase has been improved. The act declares, " That " any person duly served and retoured heir in " any lands held of subjects superiors in Scot-" land, and any person who shall acquire such " lands from a proprietor duly vested and seised " therein, and who shall obtain a conveyance, " containing a procuratory of resignation in his " favour, may apply to the Ordinary on the " bills in the Court of Session, praying a war-" rant for letters of horning, to charge the fu-" perior to receive or grant new infeftment to " fuch heir or purchaser respectively; and upon " production to the Lords of Session of a special " retour, or of a conveyance bearing a procura-" tory of resignation, the said Lords shall grant "warrant for letters of horning on fifteen days, et to charge the superior or superiors to grant " new infestments to such purchaser or dif-" ponee."

It is to the heir possessed of a special service in the lands, and to the purchaser possessed of a disposition from a proprietor who is duly seised in the lands, and containing in it a procuratory

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of relignation, that the benefit of this act is given; and I shall, in the first place, lay before you the form of proceeding laid down by the act, which enables the purchaser to force an entry.

I take the case, then, that a disponee is destrous of obtaining a charter of resignation from his superior of the subjects contained in his disposition. He must, in terms of the act, apply by bill to the Lord Ordinary on the bills. The bill is in this form:

Bill for a Horning against Superiors.

Mr Lords of Council and Session, unto your Lordships humbly MEANS and SHOWS your LOVITE B., That A., by his DISPOSITION, dated

ny heirs and affignees whomsoever, heritably and irredeemably, ALL and WHOLE (Here the ands are transcribed), IN WHICH lands and others the said A. bound and obliged himself, his heirs and successors, TO INFEFT and SEISE me or my foresaids, TO BE HOLDEN either of and and other the said A. and his foresaids blench, or from them of their immediate lawful superiors, nother same manner, and as freely in all respects the said A. or his foresaids held or might

have held themselves, as the said disposition, containing a procuratory of relignation and le veral other clauses herewith to show, will testify; AND THAT by an act of Parliament, made in the 20th year of the reign of his late Majelly King George the Second, entitled, " An act for " taking away the tenure of ward-holding in "Scotland," &c. it is enacted, That from and after the 25th March 1748, it shall and may be lawful and competent to any person who shall purchase or acquire any lands or heritages in Scotland from the former proprietor or valla who is duly infeft and seised therein, and who shall obtain from such vender or former proprietor a disposition or conveyance, containing a procuratory of refignation in favour of such purchaser or disponee, to apply to the Lor Ordinary on the bills in the Court of Seffio for the time being, praying a warrant for letter of horning to charge the fuperior, of whom fue lands or heritages were respectively held, to re ceive or grant new infeftment to such put chaser; and upon production to the Lords Seffion of a disposition or conveyance, bearing a procuratory of refignation in favour of fuc petitioner, it shall and may be lawful for th faid Lords, and they are hereby authorised at required to grant warrant for letters of horning

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on fifteen days, to charge the superior or superiors in the lands contained in such procuratory of resignation, to receive or grant new infestments to such purchaser or disponee; AND THAT

is superior of the lands and others above described; AND THAT the said A., the former proprietor or vassal, was duly and publicly vested and seised therein.

HEREFORE I befeech your Lordships for LETTERS of HORNING in the premisses, in common form. According to justice.

A. B.'s bill.

Alongst with this bill, the disposition by A. to B. is produced to the clerk of the bills, who writes on the bill, "Edinburgh, 3d April 1797, fat ut petitur, because the Lords have seen the principal disposition within mentioned." This is signed by the clerk of the bills, and by the Lord Ordinary on the bills, when it becomes a warrant for the letters of horning, which run in these terms:

GEORGE, by the grace of God, King of Great Britain, France and Ireland, Defender of the Faith, To

MESSENGERS at ARMS, our heriffs in that part jointly and severally, hereby pecially constituted, GREETING. WHEREAS it

is humbly meant and shown to us by OUR LO. VITE B., That A., by his DISPOSITION, &c. (in terms of the bill, till you come to the prayer of it, with this difference only, that the horning runs in the third person, or in name of the complainer, in place of the first, as in the bill. When you come to the prayer of the bill, the horning goes on in these terms:)

OUR WILL IS HEREFORE, and we CHARGE YOU, That on fight hereof ye pass, and in our name and authority lawfully COMMAND and CHARGE personally, or at his dwelling place, the faid TO ENTER, INFEFT and SEISE the faid complainer in all and whole the lands and others contained in the disposition above mentioned, and lying and described as aforesaid, AND for that purpose to receive refignation of the faid lands and others in virtue of the procuratory of refignation above mentioned, and thereafter to make, grant, subfcribe and deliver to the complainer and his foresaids, charters, precepts, and other writs neceffary, AFTER the form and tenor of the faid difposition and act of parliament, both before recited, in all points, WITHIN FIFTEEN DAYS next after he is charged by you thereto, UNDER the PAIN of rebellion and putting of him to the horn; wherein if he fail, the faid space being

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elapsed, that immediately thereafter ye denounce him our rebel, and put him to the horn, and use the whole other order against him prescribed by law. According to justice (because the Lords have seen the principal disposition above mentioned), As ye will answer to us thereupon. Which to do, we commit to you, jointly and severally, our full power by these our letters, delivering them by you duly executed and indorsed again to the bearer. Given under our signet, At Edinburgh, the third day of April, in the thirty-seventh year of our reign, 1797.

Ex DELIBERATIONE DOMINORUM CONCILII.

(Signed by a Writer to the Signet.)

Messenger's Execution of Charge on the Back of the Letters of Horning.

Upon the 4th day of April 1797 years, I, A. B. messen, passed at command of the within written letters of horning, raised at the instance of the within designed B., and in virtue thereof, in his Majesty's name and authority, lawfully commanded and charged the also within designed, superior of the lands and others within mentioned, to enter, infert and seise the said complainer in ALL and sunder the lands

and others particularly enumerated and defcrib. ed in the within written letters; AND for that effect to receive refignations of the faid lands and others, in virtue of the procuratory of refignation within mentioned; and thereafter to make, grant, subscribe and deliver to the complainer and his forefaids, charters, precepts, and other writs necessary, after the form and texor of the faid disposition and act of Parliament within mentioned, in all points; AND THAT within the space, under the pain, and with certification to him in manner within directed, This I did, after the form and tenor of the within written letters of horning, in all points, a just copy of charge whereof, containing a full description of the lands and others inserted in the faid letters of horning, I delivered to the personally apprehended in . WHICH faid copy of charge was subscribed by me, and did bear the date hereof, with the witnesses names and defignations following, present at the premifes, viz. C. and D.

C. witness.

E. Messenger.

D. witness.

By the act, the superior is allowed to result giving obedience to the charge, unless the legal fees for the entry of a purchaser be offered to

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him. This entry money consists of a year's rent of the subjects, deducting, 1. The feu duty. 2. The public burdens. 3. All annual burdens imposed on the lands by consent of the superior. 4. If the fuperior have a right to the teinds, the minister's stipend payable out of the feu is deducted; but if he have no right to the teinds, then a fifth part of the rent is deducted for the teinds; and where houses have been built on the feu, the rent is that at which the fubject will fet for the time, deducting all reasonable annual repairs. Under these deductions, the full rent must be offered to the superior, in the case where the vassal has recourse to the act; but in the common case, where an entry is fettled amicably, it is the custom of some subjest superiors to give to the vassal an ease of a fourth, or even of a third of the rent.

Where the superior is infest, and is in the country, so that he can be charged, and where the charter and entry money have been offered to him, it is impossible to conceive that matters should be allowed to go to extremities; and accordingly the clerks in the bill-chamber know of no instance of a caption following on this horning.

It may often happen, however, that the fuperior will allow a charge to be given before he

receives the vassal; for wherever he has him. felf a claim to the estate, he may conceive a vo. luntary entry to be a virtual renunciation of his claim: Or it may happen that the fuperior is defirous of having his interest secured by some special declaration in the renewal of the investiture, to which the vaffal refuses his confent; as, for instance, in the case of an entry on an entail, which the fuperior declines to give, without a declaration that he shall not be obliged to receive as an heir a person claiming an entry, who is not heir of line of the former heir of entail. In fuch cases, the point is usually settled by a fuspension of the charge, in which the matter is discussed and fixed by a decision of the Court of Seffion.

The form of the suspension, or of the procedure which will take place on it, there can be no occasion for troubling you with here; and the grounds on which it proceeds must depend on the circumstances of the case.

2. The Form of the Charter.

In the preceding section I have explained in what way the purchaser proceeds when it becomes necessary for him to force an entry; but this is a necessity that seldom or never occurs, the

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circumstance of the purchaser's having the aid of the act, joined to the advantage which the superior derives from the entry, renders this an easy transaction; there is seldom occasion to resort to legal measures, every thing is done by consent of the parties.

The first step is the act of resignation, which is of two sorts; the act of resignation in favorem, and of resignation ad remanentiam. It is the former of these, by which the see is returned into the hands of the superior, for the purpose of his giving out a new right to the disponee, and a new set of heirs, that I am at present to explain.

This act appears to be purely feudal; yet we certainly perceive traces of it at a much earlier period than any at which it is possible to conceive feudality to have existed. In the time of Marculfus (660), there were royal charters, where the proprietors came into the presence of the King, and, by delivery of a baton, divested themselves of their property, that it might be given to the disponee with all the force of a royal gift; and in terms of that resignation, the Prince, with all the force of law, and all the effect of a royal gift, of his own free will gives the estate to the person pointed out by the resigners.

This exhibits to us, in that early period, our very form of refignation, even our modern fymbol, and the technical words by which the valuable fal is divested; and yet it is certain that the only object of these rights was to put the deed under the protection of the King; so that the feudal law, instead of planning a new system, and inventing forms of conveyance peculiar to itself, naturally assimilated those which had formerly been in use.

In the act of refignation in favorem, the seller appears by his procurator, in presence of the superior, or of commissioners appointed by the superior, to receive resignations and give entries to vassals *, alongst with a notary public and two witnesses.

* Form of the Commission.

lawful commissioner, GIVING and COMMITTING to him full power and authority, for me and in my name, to receive all and whatever refignations shall be made to him by any of my vassals, and to subscribe and deliver to them charters and precepts of all kinds which may be necessary for renewing the insestments of the several properties, in terms of the original investitures thereof; ALL WHITE shall be equally effectual to the receiver as if granted by myself AND I hereby AUTHORISE my said commissioner to do every thing in relation to the premises which I could do myself, were I per sonally present, PROMISING to ratify and confirm every thing in shall do in the premises; BUT DECLARING that, by accepting the office hereby committed to him, my said commissioner become

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The procurator for the feller then addresses the fuperior in these words: " I resign the into your hands, in favours, lands of and for new infeftment to be given to At the same time he delivers a staff or a pen to the superior, in token of divesting the vassal. The fuperior, or his commissioner, receives the symbol of refignation, and then delivers it to the attorney for the purchaser (and the same perfon may act in both characters; he may appear as procurator for the religner, and as attorney for the resignee), as a symbol of the investiture of the purchaser. On this act, the attorney for the purchaser takes instruments in the hands of the notary public. This is done in presence of the witnesses; and the instrument of resignation which follows on this act takes its form from it.

bound to account to me for the compositions which he shall receive from my vassals at their entries, after deduction of all necessary expences; AND I CONSENT to the REGISTRATION hereof in the books of Council and Session, or other judges books competent, therein to remain for preservation; and for that purpose CONSTITUTE

my procurators, &c. In witness whereof, &c.

This deed ought to be put on record before the commissioner acts on it,

wit makes part of the vassal's title.

Instrument of Resignation.

IN THE NAME OF GOD, AMEN. BE IT KNOWN TO ALL MEN, by this present public instrument, day of THAT upon the , in the year , and of the reign of our Soof our Lord vereign Lord, George the Third, by the grace of God, King of Great Britain, France, and Ireland, Defender of the Faith, the IN PRESENCE of C., Superior of the lands and others after described, and in presence of me, notary public fubscribing, and of the witnesse after named, COMPEARED L., as procurator for, and in name of A. Esq., to the effect underwritten, specially constituted by virtue of a procuratory of refignation contained in the disposition aftermentioned; AND THERE the faid procurator, with all due humility, by flaff and baton, as use is, RESIGNED, SURRENDERED, and OVERGAVE ALL and WHOLE (Here the lands are described as in the dispositive clause of the disposition), IN THE HANDS of the said C, superior thereof, IN FAVOUR, and for new infeftment of the faid lands and others forefaid, to be made and granted to B. Efq., and his heirs and affignees whomfoever, in due and competent form, AND THAT by virtue of, and conform in a c

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form to, a procuratory of refignation contained in a disposition of the said lands, dated made and granted by the faid A. to the faid B., his heirs and affignees whomfoever; AND the faid C. fuperior, ACCEPTED and RECEIVED the fame into his hands, and thereafter of new GAVE, GRANTED, and DISPONED to the faid B., his heirs and affignees whomfoever, heritably and irredeemably, ALL and WHOLE the faid lands and others beforewritten, conform to a charter to be granted, and that by deliverance to the faid L., as attorney for and in name of the faid B., of the foresaid staff and baton; WHEREUPON, and UPON ALL and SUNDRY the premises, the attorney for the said B. asked and took instruments in the hands of me, notary public fubscribing. THESE THINGS were , betwixt the hours fo done within , of the day, month, year and of God, and of the King's reign respectively first abovewritten, BEFORE and in PRESENCE of and , witnesses to the premises specially called and required.

It is this resignation by the vassal which returns the seu to the superior, and enables him to grant a renewal of the investiture to the purchaser; but the instrument is seldom extended,

as it is not esteemed a material part of the progress. The charter which proceeds on this resignation consists of the following clauses:

1. The address. 2. The consideration, or inductive cause of the grant. 3. The dispositive clause. 4. The quaquidem. 5. The tenendas.

6. The reddendo. 7. A clause of registration.

8. A precept of sasine. And, 9. A testing clause.

Charter of Resignation.

KNOW ALL MEN by this charter, THAT I, C., immediate lawful fuperior of the lands and others underwritten, IN CONSIDERATION of a certain fum in name of composition paid to me by B. Efq., have GIVEN, GRANTED, and DIS-PONED, as I hereby GIVE, GRANT, and DISPONE, and for me and my heirs and fucceffors perpetually confirm, to the faid B., his heirs and affignees whomfoever, heritably and irredeemably, ALL and WHOLE (Here the lands are particularly described), lying within the parish of and sheriffdom of ; WHICH LANDS and others formerly pertained to A., HOLDEN by him of me, as immediate lawful superior thereof, and were by him fold and disponed to the said B., by a disposition bearing date , AND, in virtue

of the taine which claims ly RE ful ful and be infeft to the and in effeirs faid referred.

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of the procuratory of refignation therein contained, were, with all right, title, and interest which the faid A. had, or anywife might have, claim or pretend thereto, duly and lawfully RESIGNED in my hands, as immediate lawful fuperior thereof, purely and fimply, by staff and baton, as use is, IN FAVOUR, and for new infeftment of the same, to be made and granted to the faid B., his heirs and affignees, heritably and irredeemably, in due and competent form as effeirs, As authentic instruments, taken upon the faid refignation, in the hands of notary public, of the date hereof, more fully bear, TO BE HOLDEN the faid lands and others above described, by the faid B. and his forefaids, of and under me and my heirs and fucceffors in the faid estate of

IN FEUFARM, fee, and heritage for ever, Br all the righteous meiths and marches thereof, as the same lie in length and breadth, with free ish and entry thereto, and all and sundry parts, pendicles, and pertinents thereof, freely and quietly, without any impediment or ob-stacle whatever, GIVING therefor yearly the said B. and his foresaids, to me and my foresaids, the sum of TWO POUNDS Sterling of FEU DUTT, at two terms in the year, Whitsunday and Martin-mas, by equal portions, AND DOUBLING the said seu duty the first year of the entry of each heir

in the foresaid lands, AND THESE for all other exaction, demand, or fecular fervice which can any way be asked or required forth of the faid lands, in all time coming; AND I CONSENT to the REGISTRATION hereof in the books of Council and Seffion, therein to remain for preservation, and thereto CONSTITUTE my procurators, &c. AND FURTHER, I hereby DESIRE and REQUIRE you jointly and feveral. ly my bailies in that part, hereby fpecially con. stituted, THAT, on fight hereof, ye give and DELIVER to the faid B. or his forefaids, heritable STATE and SASINE, actual, real, and corporal possession of ALL and WHOLE the faid lands and others abovementioned, lying and described in manner forefaid, and here holden as repeated, AND THAT by delivering to the faid B. or his foresaids, or to his or their certain attorney or attorneys, in his or their names, bearers hereof, of earth and stone of the grounds of the faid lands and others, with all other necessary fymbols; BUT SAVING always, and referving to procura me the bygone and current feu duties, in so sar as they have not been paid, AND SAVING MY C. fells right and the right of all others concerned; curatory AND THIS in nowife ye leave undone, WHICH to leftment do I commit to you jointly and feverally my nees, for full power, by this my precept of fafine direct-

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This is the fimple form of the charter of refignation, the principal changes on which must be in the quaquidem. This clause ferves in the place of the narrative of other deeds, and points out the connection betwixt the new and the old vasfal. The charter may proceed on a procuratory of refignation contained in the disposition received by the new vasfal, or he may have acquired right to an unexecuted procuratory in an old disposition; it may have passed through feveral hands, and been at last affigned to him; or he may have acquired right to it by a fervice, or there may have been feveral procuratories. It is in this way that the quæquidem will fuffer changes; and I shall point out the manner in which they will be expressed.

1. A. holds a feu which he sells to B., with a procuratory of resignation; B. sells the lands to C., and assigns the unexecuted procuratory. C. sells to D., and assigns to him the same procuratory; and if we can suppose that no insestment has been taken by any of these disposes, so that it is possible for D. to complete his title to the property and superiority by a

charter of refignation, then the quaquidem of that charter would be thus expressed:

WHICH LANDS and others foresaid formerly per. tained heritably to A., HOLDEN by him of the , my father, as immediate law. deceased ful fuperior of the fame, and were by the faid A. fold to B., by disposition dated , and containing a procuratory of refignation and precept of fafine; and which lands were by the faid B. fold to C., by disposition and affignation bearing date the , whereby he affigned to C the faid unexecuted procuratory of refignation; and which lands were by the faid C. fold to the faid D., by disposition and affignation dated by which deed the faid procuratory was conveyed to the faid D: IN VIRTUE of which procuratory, contained in the faid A.'s disposition, of date foresaid, and of the affignations thereto, whereby the same was vested in the person of the faid D., the faid subjects were duly and lawfully RESIGNED and furrendered in my hands, as immediate lawful superior thereof, IN FAVOUR and for new infeftment of the same, to be made and granted to the faid D., in due and proper form, As authentic instruments taken upon the said , notary refignation, under the hands of

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2. Or this may be expressed as follows: WHICH LANDS and others foresaid formerly pertained heritably to A., HOLDEN by him of the de-, my father, as immediate lawful ceased superior thereof, AND WERE, with all right, title and interest which he had or anyways might have, claim, or pretend thereto, by him and his lawful procurators in his name, specially constituted by the procuratory of refignation contained in the disposition aftermentioned, duly and lawfully RESIGNED, upon the day and date of these presents, in my hands, as immediate lawful superior thereof, purely and simply by staff and baton, as use is, IN FAVOUR, and for new infeftment of the fame to be made and granted to the faid D. and his forefaids in due and competent form, AND THAT in terms of a procuratory of refignation contained in a disposition of the forefaid lands and others, made and granted by the faid A. to B., dated , to which disposition and procuratory of refignation therein contained, C. acquired right by disposition and assignation from B., dated ; and C. affigned over the same to the said D. by a disposition and as-

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fignation dated, , As authentic instruments, &c.

3. Or it may happen that the new vaffal has acquired right by fervice. Thus, if A. fells to B., and D. the fon of B., takes up the unexe. cuted procuratory in his disposition, the form of the quaquidem will be altered from the last example in this manner: After the words, "la " favours and for new infeftment," (you go on in these terms), for new infeftment of the same, to be made and granted to the faid D. and his foresaids in due and competent form, AND THAT in terms of a procuratory of refignation, contained in a disposition dated , granted by A. to B. father to the faid D., IN and TO which disposition and unexecuted procuratory of resignation therein contained, the faid D. has now right, as heir ferved and retoured to the faid deceased B. his father, conform to retour of his general fervice expede before the sheriff of upon the day of , as authentic inftruments, &c.

4. The other case which I supposed was that of a charter of resignation proceeding upon different procuratories; for example, where D. purchases land from A., and also a parcel of

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land from B., holding of the same superior, the disposition which he receives from each of these sellers will contain a procuratory of resignation, and the quæquidem will run thus:

WHICH LANDS and others abovewritten formerly pertained heritably to A. and B., respectively, HOLDEN by them of me, as immediate lawful fuperior thereof, by different titles, AND WERE, with all right, title and interest which they had, have, or anywise may have, claim, or pretend hereto, on the day and date of these presents, duly and lawfully RESIGNED by them and their espective procurators in their names, to that effect, specially constituted, by virtue of the several procuratories of refignation aftermentioned, in my hands, as fuperior forefaid, purely and simply by staff and baton, as use is, IN FA-YOUR, and for new infeftment of the fame, to be made and granted to the faid D. and his forefaids, heritably and irredeemably, AND THAT n virtue of the procuratories of refignation folowing, viz., of a procuratory of refignation for thigning the lands and others first abovemenuned, contained in a disposition thereof, dated

, granted by the faid A. to the faid D.,

ASALSO, of a procuratory of refignation for refiging the lands and others last abovemention-

ed, contained in a disposition thereof, dated granted by the said B. to D., As authentic instruments, &c.

5. When the superior has granted the charter in obedience to diligence, the quaquidem will be thus expressed:

WHICH LANDS and others foresaid formerly per. tained heritably to A., holden by him of me as immediate lawful superior of the same, and were by him fold to B., by disposition dated and containing a procuratory of refignation and precept of fafine; IN VIRTUE of which disposition and procuratory, and under the act the 20th of his late Majesty George II. c. 50, the faid B. raised letters of horning at his instance dated and figneted , for charging me, as superior foresaid, to enter and receive him as vassal in the said lands, in terms of the said statute, on which letters I was duly charged on ; AND conceiving that I had a preferable right to the property of the faid lands, which might be hurt by a voluntary act on my part, I presented a bill of suspension of the sair charge, which being passed and discussed i Court, I was by a final judgment, of date the , ordered to give an entry to the faid in

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as vaffal in the faid lands, but RESERVING AL-WAYS entire to me, my heirs and fuccessors, our claims to the property of the faid lands (The judgment of the Court will regulate this part of the narrative); AND WHICH lands and others, with all right, title, and interest which the faid A. had or anywise might have, claim, or pretend thereto, were by him and his procurators in his name constituted by the procuratory above mentioned, duly and lawfully RESIGNED in my hands, as superior foresaid, purely and simply with the condition only expressed in the above judgment, by staff and baton, as use is, IN FA-FOUR and for new infeftment to be made and granted to the faid B. and his forefaids, heritably and irredeemably, in fuch due and competent form as effeirs, As authentic instruments, &c.

In the dispositive clause, too, this exception will be taken notice of thus: "Perpetually 70 and 1N favour of the said B. and his heirs, heritably and irredeemably; BUT under the refervation herein after expressed, ALL and WHOLE, &c."

3. Of the Sasine on the Charter of Resignation.

This charter is completed by fasine, the form of which differs very immaterially from those of

which the forms have been already given. It is principally in the narrative of the warrant that the difference appears. The charter of refignation is thus narrated:

" HAVING and HOLDING in his hands a CHARTER of RESIGNATION, made and granted by C., of the date underwritten, and containing therein the precept of fasine after inserted, Br WHICH charter the faid C. GAVE, GRANTED, and DISPONED to and in favours of the faid B., his heirs and affignees whomfoever, heritably and irredeemably, ALL and WHOLE (Here the lands are taken in from the dispositive clause), TO BE HOLDEN in manner, and for payment of the feu duties and others, mentioned in the faid charter, As the fame in itself more fully bears; WHICH CHARTER of RESIGNATION, containing the precept of fafine above mentioned and after inferted, the faid procurator presented to the said bailie, and so on." In the end of the instrument, you will fay, "GAVE and DELIVERED to the faid B. heritable STATE and SASINE, actual, real, and corporal possession of the lands and others, lying and described in manner foresaid, AND THAT by delivery to the faid procurator of earth and stone of the said lands, with all other usual and necessary symbols; BUT with the exceptions and

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under the refervations above expressed, AFTER the form and tenor of the charter and precept of fasine above inserted, in all points: WHERE-WPON," &c.

4. OF THE CHARTER OF RESIGNATION AND CONFIRMATION.

The charter of refignation is often united with the charter of confirmation. Formerly it was the constant practice to unite them; and, n charters of refignation down to a late period, you will find a clause of confirmation uniformy thrown in. The practice proceeded on this, hat the disposition to the purchaser enabled im to enter with his fuperior either by refignation or confirmation, "the one without preudice to the other;" and hence it was thought hat the effect of the one did not destroy the flect of the other. On the contrary, they were eld to afford mutual strength and support to ach other. But latterly a better practice has revailed, and the danger of any interference is arefully guarded against. To explain this, I hall suppose A. to have sold an estate to B., and the disposition to have inserted an obliga-

tion to infeft, a me and de me, with a procurator of refignation and precept of fasine; that, upon this precept, B. was infeft, and then fold the lands to C., with a precept of fasine. C., in completing his title, we shall suppose to have taken a charter of refignation, proceeding on the procuratory in A's. disposition, assigned to In this charter of refignation, achim by B. cording to the old practice, there would have been a clause confirming all the writs in favour of C. and his authors; and it was then held that this confirmation, in terms of the purchaser's disposition, did not affect the resignation; or perhaps we may attribute this practice to the opinions of a still earlier period, when rights absolutely base were secured by a claused this kind, without the possibility of their interfering with the public right created by the refignation.

But from whatever cause this practice arose, the danger of it has been perceived, and is carefully shunned. Were a title to be completed now in the manner that I have supposed, the consequence of the general clause of confirmation would be to render B.'s base right a public one, and consequently to divest A.; and A. being divested, the procuratory of resignation in

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his disposition to B., on which C.'s charter is founded could carry nothing, and the charter would consequently be void, the whole estate, property and superiority, remaining in the barreditas jacens of B.

But although this would be the confequence of uniting these forms in the case I have supposed, there are other cases where their union is necessary, and where it will fave other forms. Thus, for instance, where a purchaser has acquired right to an estate descending to the seller by base titles, and is desirous of entering by refignation; he will confirm the feller's base right, which raises it up into a public one, sanctions his procuratory of refignation, and enables the purchaser to resign upon that procuratory, and obtain his charter of refignation. In the ame way, this union may be exceedingly convenient for an heir in different situations that may occur; but these deeds I do not at present take up.

Charter of Resignation and Confirmation in favour of a Purchaser.

KNOW ALL MEN by these presents, That I, C. immediate lawful SUPERIOR of the lands and others aftermentioned, IN CONSIDERATION of a certain sum of money paid to me by B. for

granting hereof, have GIVEN, GRANTED, and DISPONED, and for me and my heirs and for ceffors perpetually CONFIRM, as I hereby GIFE. GRANT, DISPONE, and perpetually CONFIRM, to and in favour of MY LOVITE B., his heirs and affignees whomfoever, heritably and irredeem ably, ALL and WHOLE, &c.; WHICH LAND and others foresaid formerly belonged her tably to A., holden by him immediately of and under me (in virtue of the confirmation herein contained), and were disponed by him to the said B., and his forefaids, by disposition containing procuratory of refignation, and dated ; and which lands were, in virtue of the faid proceratory of resignation, duly and lawfully resign ed and furrendered in my hands, as immediate lawful fuperior thereof, IN FAVOUR and for new infeftment of the same, to be made and granted to the faid B. and his heirs whomfoever, he ritably and irredeemably, in legal form, as allthentic instruments taken on the faid resigna-, notary public, of tion in the hands of the date of these presents, at more length bear; TO BE HOLDEN the faid lands and eftate, by the faid B. and his heirs, of and under me and my heirs and fuccessors in the estate of feufarm, fee, and heritage for ever, by all the righteous meiths and marches thereof, as the

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AND THAT in the whole heads articles, claufes, and contents thereof; AND [DECLARE this confirmation to be as valid and effectual, and of as great strength and effect as if the faid writs hereby confirmed had been word for word herein contained, or as if this confirmation had been granted before the taking of the faid fasine; wherewith, and with all objections and defects which can be brought against the same, or against this confirmation, I have dispensed, and for me and my foresaids for ever dispense, SAVING and RESERVING ALWAYS my own rights, and the rights of all others in the subjects above disponed, as accords of law; AND I CONSENT to the REGISTRATION hereof in the books of Council and Seffion, therein to remain for preservation, and thereto constituti my procurators, &c. AND FUR

THER (Insert a precept of Sasine).

2. Where the Estate holds of the Crown.

In laying before you the crown charter, by which the right of a purchaser is completed, so as to be held of his Majesty, I shall follow a different order from that which I observed in treating of the private charter. In that case, it appeared to be the most natural order, after having

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considered the disposition and sasine, to turn to he charter of confirmation by which that right s rendered public. At present I shall think myself more at liberty, and shall first lay before you the charter of resignation.

The crown charter differs in no material part from the charter by a subject superior; the inention of the deed is the same; the clauses and erms of conveyance are the same; the effect of t is the same; the difference principally conists in the form of obtaining the charter.

The Barons of Exchequer, upon whose warrant the royal charter proceeds, act in a ministerial, not in a judicial, capacity. They are the commissioners named by his Majesty for receiving resignations, and renewing the investitures of the crown vassals: Their office is the same with that of the commissioners of a private person, and they are appointed by a commission from the King, entirely unconnected with their judicial powers.

It is the duty of the Barons to see that the charter be regular, that it agree in the description of the lands, in the nature of the holding, and in the amount of the services, with the original charter; or, what is the same thing, with a former crown charter of the same lands, which must have undergone a similar revisal.

Being satisfied in these particulars, they give their sanction to the signature, which is the warrant of the charter; and the signature thus approved of and sanctioned, gives authority to the keepers of the different seals to expede those precepts and warrants, which have been devised for the security of the crown and of the vassals, for a check to every species of fraud, and as a mean of preserving evidence of the right.

There are thus two objects of attention, the one is the fignature, the other is the passing of the different warrants through the seals; and in this order I shall treat the subject.

1. Of the Signature.

The fignature is an order under the superfeription of his Majesty (or under the cashed, which contains a fac simile of that superscription), with consent of the Barons of Excheques, for a charter to be made out in favour of the vassal, in the terms therein expressed. This signature is prepared by a clerk to the signed and the preparing of them is one of the previleges peculiar to that order. They vary as cording to the nature of the charter which is to be granted, as a signature of resignation, or deconfirmation, and so on. In the case of a pur-

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chaser at a voluntary sale, the charter by which he completes his title will be either a charter of resignation, a charter of confirmation, or a charter of resignation and confirmation. (The charter of sale and adjudication will be afterwards considered.) When the disposition to the purchaser has been granted by a person inseft, and holding of the Crown, he may either complete his title by a charter of resignation, proceeding on the procuratory in the disposition he has received, or he may take insessment on the precept of sasine contained in that disposition, and obtain a charter of confirmation.

But I am to suppose that the purchaser completes his title by a charter of resignation; in that case, a signature of resignation will be prepared, and will consist of the following parts:

1. A command to prepare a charter.

2. The terms of the dispositive clause of the charter.

3. The terms of the quaquidem.

4. Of the tenendas.

5. Of the reddendo. And, 6. The conclusion, ordering the charter to be executed in ample form, and with all clauses necessary. These parts are thus expressed:

he complete. noise resident of Resignation. a charter of

GEORGE R. This superscription is marked by the

definat a voluntary fale, the charter by which

OUR SOVEREIGN LORD, with the SPECIAL AD. VICE and CONSENT of A., Efq. Lord Chief Ba. ron of his Majesty's Court of Exchequer in that part of Great Britain called Scotland, B., C. D., and E., Esqrs., remanent Barons of his Majesty's said Court of Exchequer, ORDAINS 1 charter to be made and passed under the fall appointed by the treaty of Union to be kept in place of the great feal thereof formerly uld there, GIVING, GRANTING, and DISPONING, and for his Majesty and his royal successors perpe tually confirming, as his Majesty, with atvice and confent forefaid, by these present GIVES, GRANTS, and DISPONES, and for him and his royal fucceffors perpetually CONFIRMS, to his Majesty's LOVITE L. M., and his heirs and al fignees whomsoever, heritably and irredeem ably, all and whole (Here the lands are describ ed as in the disposition, and in the charter will which the fignature is to be revised); WHICH LANDS formerly belonged heritably to W.S., ho den by him immediately of and under his Maje sty, and were disponed by the said W. S. to the

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aid L. M. and his foresaids, by disposition conaining procuratory of refignation, and dated ; AND which lands were, in virtue of the said procuratory of resignation, duly and lawfully refigned and furrendered in the hands of the said (Lord Chief Baron, or the name of the Baron in whose hands the resignation was made), for himself and in name of the remanent Barons of his Majesty's faid Court of Exchequer, his Majesty's commissioners, having power to receive refignations in his Majefy's name, and to grant new infeftments thereupon as in the hands of his Majesty, who is the immediate lawful superior thereof, purely and imply, by staff and baton, as use is, IN FAVOUR and for new infeftments of the same, to be made, given, and granted to the faid L. M., his heirs and affignees whomfoever, heritably and irredeemably, in legal and proper form, as authentic instruments taken upon the said resignation in the hands of , notary public, of the date of these presents, at more length bears, TO BE HOLDEN and TO HOLD, ALL and WHOLE the faid lands and others, with the pertinents abovewritten, by the faid L. M. and his foresaids, of his Majesty and his royal successors, immediate lawful superiors thereof, in feufarm, fee, and heritage for ever, by all the righteous meiths

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and marches thereof, old and divided, as the fame lie in length and breadth, &c., houses, biggings, &c., freely, quietly, &c., without any revocation or obstacle whatever, GIVING there. for yearly, the faid L. M. and his forefaids, to his majesty and his royal successors, immediate lawful fuperiors thereof, the fum of (The reddendo will correspond precisely with the red. dendo of the former charter of the crown), AND THESE for all other exaction, demand, or fecular fervice which can be exacted or required furth and from the lands and others abovewritten, or any part or portion thereof; AND THAT the faid charter be extended in ample form, with all clauses needful, and precepts be directed hereupon. GIVEN at EDINBURGH, the one thousand feven hundred and day of ninety-seven years *.

Composition,	L.	Sterling.	B.
В.			C.
Hara Maria Car			D.
Malos was			E.

^{*} Each page of this fignature is subscribed by the Baron Reviser, and the last page by the whole Barons; and, when completed as a warrant for the precept, has the receipts and marking which are here subjoined to it.

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Edinburgh, 2d February 1797. Received the above composition of Sterling.

J. G. D. R. G.

Edinburgh, 3d February 1797. Presented to the Right Honourable the Lord Chief Baron, and Barons of his Majesty's Court of Exchequer in Scotland, by me

R. B. Pr.

Exchequer, Edinburgh, 4th February 1797.
Recorded in the register of signatures.

J. L.

2. If, in place of taking a charter of refignation, the purchaser shall have first been infest on the precept of sasine in the disposition from the seller, he will complete his title by a charter of confirmation; or, where the seller may also have been infest base, the title may be completed by confirming both of the base rights; and, in either case, a signature of confirmation will be prepared, consisting, 1. Of the command to prepare a charter. 2. Of the clause of confirmation. 3. Of a clause dispensing with defects. 4. Of the tenendas. 5. Of the redden-

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do (or, in place of these two last clauses, a saving clause, reserving his Majesty's right to the duties and services payable by the original rights). And, lastly, There will be an order to extend the charter in ample form.

Signature of Confirmation.

[Marked by the Cashet.] GEORGE R. OUR SOVEREIGN LORD, with the SPECIAL AD-FIGE and CONSENT of A. Efq., Lord Chief Baron of his Majesty's Court of Exchequer, in that part of Great Britain called Scotland, B. C. D. and E., remanent Barons of his Majesty's faid Court of Exchequer, ORDAINS a charter to be made and passed under the seal appointed by the Treaty of Union to be kept and used in Scotland, in place of the Great Seal thereof formerly used there, RATIFTING and APPROVING, and for himself and his royal successors perpetually confirming, likeas his Majesty, with advice and confent foresaid, by these presents RATIFIES, APPROVES, and for himself and his fucceffors perpetually confirms to his Majesty's LOVITE L. M., his heirs and affignees whomfoever, heritably and irredeemably, A DISPO-SITION granted by W. S. to the faid L. M., dated , whereby the faid W.S.

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DISPONED to the faid L. M. and his forefaids, heritably and irredeemably, all and whole (Here the lands will be described, and the description must correspond with that of the lands in the former Crown charter); which disposition contains an obligation on the faid W. S. to infeft the faid L. M. and his forefaids in the faid lands and others, by two feveral infeftments and manners of holding, the one thereof to be holden from them of their immediate lawful superiors thereof, in the same manner, and as freely in all respects as the said W. S. or his predecessors held or might have holden the fame themselves, with a precept of sasine applicable thereto: As ALSO, an INSTRUMENT of SASINE in favour of the faid L. M., taken on the faid precept of fafine under the hands of tary public, and recorded in the register of fafines the day of; AND THAT in the whole heads, claufes, articles, tenor and contents of the faid writs, DISPENSING hereby with the generality of this confirmation, AND DECLARING, that the fame is and shall be as valid and fufficient, and of as great force, strength and effect, as if the faid disposition, precept of fasine therein contained, and instrument of fafine following thereon, were herein verbatim inferted, and as if this confirmation

had been granted before the taking of the faid fasine, although the same be not so done: WHEREWITH, and with all other objections, defects or imperfections which can be anyways alleged or objected against the same, or this confirmation thereof, his Majesty HAS DIS-PENSED, and by these presents, with consent foresaid, DISPENSES for ever; TO BE HOLDEN and to hold all and whole the faid lands and others, with the pertinents abovewritten, by the faid L. M. and his foresaids, of his Majesty and his royal fuccessors, immediate lawful fuperiors thereof, in feufarm, fee, and heritage for ever, by all the righteous meiths and marches thereof, old and divided as the fame lie in length and breadth, &c., houses, biggings, &c., freely, quietly, &c., without any revocation or obstacle whatever; GIVING therefor, yearly, the faid L. M. and his foresaids, to his Majesty and his royal fuccessors, immediate lawful superiors thereof, the fum of (The reddendo must correspond with the reddendo of the former charter); AND THESE for all other burden, exaction, demand, or fecular fervice which can be exacted or required furth and from the lands and others abovewritten, or from any part or portion thereof; AND THAT the faid charter be extended in ample form, with all clauses need-

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ful, and precepts to be directed thereupon.

GIVEN AT EDINBURGH, the day of one thousand seven hundred and ninety-seven years.

This signature is signed and marked in the same manner with the signature of resignation.

I have given in this fignature of confirmation both the tenendas and reddendo, because it is the more usual form of this fignature; but in place of these, you will sometimes find the following clause substituted, "Saving and RE-SERVING to his Majesty and his royal successors, the seu and blench duties, and other duties and services payable to them surth of the lands and others foresaid, in terms of the former rights and infestments of the same."

3. These two forms, the charter of resignation and of confirmation, it may be necessary to unite. Thus, suppose A. B., holding of the Crown, to have disponed to W. S., with procuratory and precept, and W. S. to have taken saline on the precept, and afterwards disponed with procuratory and precept to L. M., if L. M. were desirous to hold of the Crown by a charter of resignation, he would attain his ob-

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ject by confirming A. B.'s disposition to W. S., which would make W. S.'s right public, and so give effect to the procuratory in his disposition, by which means a charter of resignation on that procuratory in favour of L. M. would carry to him the whole property and superiority which had been formerly in A. B. It is for such a purpose as this that the charters of resignation and of consirmation are united. The signature on which it proceeds is prepared in this form:

Signature of Resignation and Confirmation.

OUR SOVEREIGN LORD, with the SPECIAL ADVICE and CONSENT of A.; Esq. Lord Chief Barron of his Majesty's Court of Exchequer in that part of Great Britain called Scotland, B., C., D., and E., Esqrs., remanent Barons of his Majesty's said Court of Exchequer, ORDAINS a charter to be made and past under the seal appointed by the Treaty of Union to be kept and used in Scotland in place of the great seal thereof formerly used there, GIVING, GRANTING, and DISPONING, and for his Majesty and his royal successors perpetually CONFIRMING, as his Majesty, with advice and consent foresaid, by these presents GIVES, GRANTS, and DISPONES, and for

him and his royal fuccessors perpetually con-FIRMS, to his Majesty's LOVITE, L. M., and his heirs and affignees whomfover, heritably and irredeemably, all and whole (Here the lands are described); WHICH LANDS belonged heritably (in virtue of the confirmation herein granted), to W. S., holden by him immediately of and under his Majesty, and were disponed by the faid W. S. to the faid L. M. and his forefaids, by disposition containing procuratory of refignation, and dated ; AND WHICH lands were, in virtue of the faid procuratory of refignation, duly and lawfully refigned and furrendered in the hands of the faid . , for himself and in name of the remanent Barons of his Majesty's said Court of Exchequer, his Majesty's commissioners having power to receive refignations in his Majesty's name, and to grant new infeftments thereupon, as in the hands of his Majesty, who is the immediate lawful superior thereof, IN FAVOUR and for new infeftments of the same, to be made, given, and granted to the faid L. M., his heirs and affignees whomfoever, heritably and irredeemably, in legal and proper form, as authentic instruments taken on the faid refignation in the hands , notary public, of the date of these prefents, at more length bear; TO BE HOLDEN, &c.

(Here the tenendas will be inferted in common form); GIVING therefor yearly, &c. (The reddendo will also be inferted in common form), AND THESE for all other burden, exaction, demand, or fecular fervice which can be exacted or required furth and from the lands and o. thers abovewritten, or from any part or portion thereof: As also, his Majesty, with advice and confent foresaid, RATIFIES and AP-PROVES, and for himself and his royal succesfors by these presents perpetually CONFIRMS, a disposition bearing date the day of granted by A. B. to the faid W. S., whereby he fold and disponed to the faid W.S., his heirs and affignees, heritably and irredeemably, all and whole the lands and others abovementioned, obliging himself to infeft the said W. S. and his foresaids in the said lands, by two several infeftments and manners of holding either a me or de me; as also the instruments of sasine in favour of the faid W.S. following on the precept contained in the faid disposition, dated the

, and registered , IN the whole heads, articles, clauses, and contents thereof: And his Majesty, with advice and consent foresaid, hereby DECLARES this confirmation to be as valid and sufficient, and of as great force, strength, and effect, as if the said disposition, precept of

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fafine therein contained, and the instrument of fasine taken thereon, were verbatim herein inferted, and as if this confirmation had been granted before the taking of the faid fafine; WHEREWITH, and with all other objections, defects, or imperfections which can be anywife alleged against the same, or this confirmation thereof, his Majesty HAS DISPENSED, and by these presents DISPENSES for ever, AND THAT the faid charter be extended in ample form, with all clauses needful, AND precepts be directed thereon as effeirs. GIVEN at EDINBURGH. one thousand seven hunday of the dred and ninety-feven years.

Subscribed and marked in the same way as the others.

4. I have thus given the simple form of the signature, and I shall now take notice of those variations which occur in it, marking, 1. Those which are occasioned by the lands holding of the Prince; 2. Those which must accompany the changes in the object of the deed; and, lastly, Those which arise from the lands having been formerly church lands.

1. The Changes on the Signature from the Lands holding of the Prince.

1. The fignatures which I have now laid before you, are those of lands holding of the crown, and the first variety which I shall mark is that which takes place where the lands hold of the Prince.

HIS ROYAL HIGHNESS GEORGE AUGUSTUS FRE-DERICK, Prince of Great Britain and Wales. Prince and Stewart of Scotland, Electoral Prince of Brunswick and Lunenburgh, Duke of Cornwall and Rothefay, Marquis of the Isle of Ely, Earl of Carrick, Chefter, and Eltham, Viscount of Launceston, Baron of Renfrew and Snowden, and Lord of the Isles, with the special advice and confent of A., Efg. Lord Chief Baron of his Majesty's Court of Exchequer in that part of Great Britain called Scotland, B., C., D., and E., Esqrs., remanent Barons of his Majesty's faid Court of Exchequer, commissioners nominated and appointed by his Royal Highness for the administration and government of the principality of Scotland, ORDAINS a charter to be made and passed under his Royal Highness's great seal, GIVING, &c., and for his Highneff FIR

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ness and his royal fuccessors perpetually con-FIRMING, &c. to his Highness's LOVITE L. M., his heirs and affignees whomfoever, heritably and irredeemably, ALL and WHOLE, &c.; WHICH LANDS and others abovewritten formerly pertained to F. G., holden by him of his Highness and his royal successors, Princes and Stewarts of Scotland, immediate lawful fuperiors thereof, &c. (The rest of the quaquidem is in common form), TO BE HOLDEN and TO HOLD, ALL and WHOLE the faid lands and others, with the pertinents thereof particularly above specified, by the faid L. M. and his forefaids, of and under his Highness and his royal successors, Princes and Stewarts of Scotland, in feufarm, fee, and heritage, by all the righteous meiths and marches thereof, old and divided, as the fame lie in length and breadth, &c., houses, biggings, &c., GIVING therefor yearly, the faid L. M. and his foresaids, to his Highness and his royal fucceffors, Princes and Stewarts of Scotland, immediate lawful superiors thereof, the fum of, &c. (The remaining part of the fignature is in common form).

2. When the Prince is under age, the King acts for him as his administrator in law, and the

following changes will take place in the fignature.

OUR SOVEREIGN LORD, with the special ADVICE and consent of A., Efg. Lord Chief Baron of his Majesty's Court of Exchequer in that part of Great Britain called Scotland, &c. &c., OR-DAINS a charter to be made and passed, &c., GIVING, GRANTING, and DISPONING, and for his Majesty and his royal successors perpetually CONFIRMING, likeas his Majesty for himself, and as administrator in law to his fon, George Augustus Frederick, Prince of Wales, and Prince and Stewart of Scotland, with advice and confent foresaid, GIVES, GRANTS, and DISPONES, and for himself and his son and their royal succeffors perpetually confirms, to his Majesty's LOVITE L. M., his heirs and affignees whomfoever, heritably and irredeemably, ALL and WHOLE, &c.; WHICH LANDS and others abovewritten formerly pertained to F. G., holden by him of the Prince and Stewart of Scotland, immediate lawful superior thereof, &c. (The rest of the quaquidem is in common style, with this alteration, that you fay the lands were refigned in the hands of the Barons, "as in the hands of " his Majesty, as tutor and administrator in law " for the faid George Prince of Wales, Prince

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" and Stewart of Scotland, immediate lawful " fuperior of the same," TO BE HOLDEN and to HOLD, ALL and WHOLE the foresaid lands and others, by the said L. M. and his foresaids, of and under his Royal Highness George Prince of Wales, Prince and Stewart of Scotland, and his royal successors, Princes and Stewarts of Scotland, in feusarm, see, and heritage, by all the righteous meiths and marches thereof, &c., houses, biggings, &c., GIVING therefor yearly to his Royal Highness George Augustus Frederick Prince of Wales, Prince and Stewart of Scotland, and his royal successors, Princes and Stewarts of Scotland, immediate lawful superiors of the same, the sum of, &c.

3. It may happen also, that, while the King acts as administrator for his son, there may be lands holden of the crown, as well as of the Prince, to which the person may wish to complete his title, and in that case both parcels of land may be thrown into the same signature, and given in one and the same charter. The signature will be thus expressed:

GEORGE R. [Marked by the Cashet.]
OUR SOVEREIGN LORD, as King, and as administrator in law for his son, his Most Serene

Highness, George Augustus Frederick, Prince of Wales and Stewart of Scotland, Baron of Renfrew, &c., with the special ADVICE and CON. SENT of A. Efq., Lord Chief Baron of his Majefty's Court of Exchequer in that part of Great Britain called Scotland, &c., ORDAINS a charter. &c., GIVING, GRANTING, and DISPONING, and for his Majesty and his Royal successors, as King, and as administrator in law for his fon. Prince of Wales, Prince and Stewart of Scotland, perpetually CONFIRMING, likeas his Majesty, with confent foresaid, by these presents GIVES, GRANTS, &c. &c. (In the quæquidem, the first parcel of lands will be said to have been refigned in the bands of his Majesty, as King, and the second parcel as administrator in law for his son, in these terms): Which lands first above described, viz. (here the names were repeated), pertained heritably to F. G., &c. in the hands of the faid , for himself, and in name and behalf of the remanent Barons of his Majesty's faid Court of Exchequer, as in the hands of his Majesty as King, immediate lawful superior of the same; and which other lands, viz. the lands , were duly and lawfully refigned in of the hands of , for himself, and in name and behalf, &c., as in the hands of his Majesty, as administrator in law for the said Most Se-

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rene Prince his fon, immediate lawful superior of the same;

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TO BE HOLDEN, and to HOLD the faid lands of , of his Majesty and his Royal successors as Kings, immediate lawful fuperiors thereof, in feufarm, fee, and heritage for ever, AND TO BE HOLDEN and to HOLD the faid lands of the faid Most Serene Prince and his successors. Princes of Wales and Stewards of Scotland, in free blench farm, in manner after mentioned, civing yearly, the faid L. M. and his forefaids, to his Majesty and his Royal successors, and to the Most Serene Prince and his successors: Princes of Wales, and Princes and Stewards of Scotland, the feu and blench duties after mentioned, viz., GIVING to his Majesty and his Royal fucceffors, for the faid lands of , the , at two terms in the year, Whitfunday and Martinmas, &c., and GIVING to the Most Serene Prince and his fuccessors, Princes of Wales, and Princes and Stewards of Scotland, for the faid lands of , the fum of one penny Scots money, on the ground of the faid lands, at the term of Whitfunday yearly, in name of blench duty, if asked allenarly: AND THESE, &c.

The compositions will be struck separately, and the receipts by the receiver of each will be subjoined.

- 2. I am now to point out the alterations on the signature, arising from the addition of other clauses to the common form, or from the different manners of expressing the common clauses.
- 1. The quaquidem is the clause on which any change will take place; and after the remarks I have made on this clause in the charter of resignation by a subject superior, p. 231, it will be unnecessary to detain you long here. The instance already given is that of a resignation proceeding on a procuratory of resignation contained in the seller's disposition to the purchaser, in whose favour the Crown charter proceeds; and I am now to suppose that the charter proceeds, not in savour of the purchaser, but of his heir, the quaquidem will be thus expressed:

WHICH LANDS and others abovewritten pertained heritably to W. S., HOLDEN by him immediately of and under his Majesty, AND WERE by his lawful procurators in his name, duly and

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lawfully RESIGNED in the hands of the faid for himself, and in name and behalf of the remanent Barons of his Majesty's Court of Exchequer, as in the hands of his Majesty, immediate lawful superiors thereof, &c., agreeably to and by virtue of a procuratory of resignation contained in a disposition of the said lands, dated , granted by the said W. S. to A. M., father to the said L. M., to which the said L. M. has now right, as heir in general served and retoured to his said deceased father, conform to retour of his service, dated .

Or, I shall suppose that the charter proceeds in favour of the purchaser, but that he has acquired several additional parcels of land, and is desirous of passing one charter for the whole, the clause will be thus expressed:

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Which LANDS of formerly belonged heritably to W. S., holden by him immediately of and under his Majesty, and were disponed by him to the said L. M. and his foresaids, by disposition dated , and containing the procuratory of resignation after mentioned; AND WHICH LANDS of , all formerly belonged heritably to S. H., holden by him immediately of and under his Majesty, and

were disponed by the said S. H. to the said L. M. and his foresaids, conform to two dispofitions, each containing a procuratory of refig. nation, and bearing date ; AND WHICH LANDS of (Here the names of the whole were repeated), were, in virtue of the respective procuratories of refignation contained in the respective dispositions above mentioned, all duly and lawfully RESIGNED and furrendered in the hands of the faid, &c., commissioners having power to receive refignations in his Majesty's name, and to grant new infeftments thereupon as in the hands of his Majesty, immediate lawful superior thereof, in favour, and for new infeftment of the fame, to be made and granted to the faid L. M., his heirs and disponees whomfoever, heritably and irredeemably, in legal and proper form, as authentic instruments taken on the faid refignations, in the hands of notary public, of the date of these prefents, at more length bears.

2. The next clause I shall take notice of is the clause of union, or a dispensation, as it is sometimes called, which is so common that it may be truly said to be a constituent part of the signature. This clause may be thrown in without any warrant, and it is constantly passed

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by the Barons; it follows the quæquidem, and is thus expressed;

AND FURTHER, his Majesty WILLS and GRANTS, and for himself and his royal successors ORDAINS and DECLARES. That a fasine or fasines to be taken now and in all time coming by the faid L. M. or his forefaids, at the mansion house of , or upon the ground of the lands of , or upon any part of the lands herein before disponed, by delivery of earth and stone thereof, allenarly, without the necessity of any other fymbol, are and shall be as legal and fufficient fafines for the lands, teinds, and other heritages before disponed, with the pertinents thereof, or for the parts thereof, for which fafine shall be so taken, as if a particular sasine were taken for each part and portion thereof, and by delivery of all the usual symbols; AND THAT notwithstanding the separate nature of the faid tenements, whether the fame proceeds from their lying discontiguous, or from their being derived from different authors, or requiring different fymbols, or from whatever other causes separate sasines of the said subjects may be required; WITH regard to which, and all other defects and exceptions that might be made to the efficacy and validity of fuch fafines, his

Majesty has DISPENSED, and by these presents, for himself and his royal successors, for ever DISPENSES.

3. The erecting of lands into a barony is beyond the common powers of a commissioner. and requires a special warrant. There is no late instance of such erection, unless when there is at the same time an erection of a burgh of barony; but were it to be applied for, the form would be to prefent a petition to the Lords of the Treasury, praying them to authorise a signature to be passed, erecting and uniting the lands into a barony, &c. This petition would be remitted to the Barons of the Court of Exchequer in Scotland, under whose immediate direction a fignature would be prepared, and returned to the Lords of the Treasury, by whom it would be fubscribed; and having received his Majesty's superscription, it would be returned here as a warrant for the precept under the fignet, and the rest of the procedure would take place in common form.

4. It may happen that lands holding ward (even at this distance from the act abolishing that tenure), will appear in a Crown charter, without any change on the holding. When

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this is the case, the holding will, in virtue of the statute 20th Geo. II. c. 50, be converted into blench holding, and the reddendo will be thus expressed: "GIVING therefor, yearly, the and his forefaids, to his Majesty and faid his royal fuccesfors, immediate lawful fuperiors thereof, the fum of one penny, Scots money, on the ground of the faid lands, at the term of Whitfunday, yearly, in name of blench farm, if asked allenarly, and that in place of the duties of ward, and other duties and fervices formerly payable furth of the faid lands of which duties and fervices are now abolished, by virtue of the act of parliament made and passed in the 20th year of the reign of his late Majesty Geo. II., entitled, An act for taking away the tenure of ward holding in Scotland, and for converting the same into feu and blench holdings."

3 Change on the Signature when the Lands have been formerly Church Lands.

The change which takes place on the fignature, in consequence of the lands having been formerly held of the church, consists, first, in a change on the quaquidem, which will be thus expressed:

Which LANDs and others pertained heritably to holden by him of his Majesty and his royal successors, immediate lawful superiors thereof, as coming in place of the commendator of Crossreguel (or of whatever dignatory of the church the lands may have been held), formerly superior of the same, and were by him and his lawful procurators in his name, &c. (in common form.)

The tenendas will be thus expressed:

To BE HOLDEN and to HOLD, all and whole the lands and others foresaid, by the said and his foresaids, of his Majesty and his royal successors, immediate lawful superiors thereof, as coming in place of the said commendator of Crossreguel, in seufarm, see, and heritage, &c.

The reddendo will also bear to be payable to his Majesty, &c. as coming in place of the said commendator; and the tenendas and reddendo of the former charters will be your rule for expressing these clauses. But I must observe, although it may seem a little out of place here, that where the lands have been church lands, the order of passing the charter through the

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feals is regulated by the act 1690, c. 32., and by the act 1698, c. 11. The first of these acts provides, that where the valuation of church lands is only 101., or under that sum, the charter of such lands shall pass the great seal per saltum, without passing any other seal, and that gratis, and without payment of any composition in the exchequer, or other dues; and this is extended by the latter act, which provides, that the signatures of charters of the "said "lands, the valuation whereof is but 1001." Scots or under, shall pass the great seal per "saltum, without passing any other seal, and "that gratis, without payment of composition "in exchequer, or other dues."

By the same acts it is provided, that where the lands do not exceed 200l. Scots of valuation, the dues of the charter are less than what are exacted in other cases; and the property of church vassals in Orkney and Shetland, which do not exceed 20l. Scots of valuation, are declared to be udal property, and to require no renewal of the royal grant. These circumstances form an exception to the general rules in expeding charters, to be immediately stated.

2. Of paffing the Charter through the Seals.

The fignature which we have been confider-

which appear to convey property are merely the words which are to be used by the proper officers in forming the charter; but, as they stand in the signature, they convey nothing; the signature is a mere warrant; it is as if a subject superior were to say to his man of business in a memorandum, "Let a charter be granted to A. B., giving, granting, and disponing to him and his heirs and assignees such and such lands." But I shall now show you in what manner this warrant receives the authority of the Barons, and by what forms the charter is carried through the seals,

The first step is to give in a note to the prefenter of the signatures, within six days after
the sitting of the term of the Court of Exchequer in which you mean to pass your signature.
This note contains the name and designation of
the person in whose favour the charter is to be
obtained, and a short description of the lands,
thus, "Signature of resignation in savour of
A. B., Esq., of the lands of , lying within the parish of , and sherissdom of ."
From these notes a roll of the signatures to be
passed in that term is made up, and affixed to
the walls of the Court of Exchequer.

This being done, the fignature is prepared, and copied fairly out upon paper of a particu-

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lar fize, and ruled fo as to confine the writing, and allow of binding up the fignatures into books, for their better prefervation in the fignet office. On the first page, room is left at the top of the fignature for the cashet which supplies the place of the royal superscription; and the fignature being thus copied out, the clerk to the fignet who has prepared it puts his name on the back of the fignature, and, in obedience to an order of the Barons, of the 5th December 1758, revived by a resolution the 13th May 1795, he delivers, it with the vouchers for firiking the composition, to the presenter of figuatures, within twelve days from the first day of the term, and by the presenter the revising roll is made up.

On the day appointed for revising the signature, the clerk to the signet must have the titles to the estate with which the signature is to be revised, and he must have made out a brief, explaining the vassal's right to the lands, and the manner in which the signature is to be revised. It is commonly made out in this form:

BRIEF for revising the SIGNATURE of RESIGNA-TION of the LANDS of in favour of A. B.

The lands of belonged to the deceased L., held by him of his Majesty, and were by

The figurature will be revised by the charter in favour of Lighted or and by the differential in favour of A.B. and by the different in favour of A.B.

o the signet who sas prepared it puts his name on the pack of more sidt air obedience

The late L. Earl of O., on the 1st February 1746, obtained a charter from his late Majesty under the great seal, of several lands and baronies, and in particular of the lands of , lying in the parish of , and sherissdom of . Upon this charter the Earl was infest, and, of this date (1772), he disponed the said lands of to R., by disposition containing a procuratory of resignation for resigning them in the hands of his Majesty.

The faid R. conveyed the faid lands to S., by disposition and affignation, dated the day of

By S. they were in the same manner, on the day of , conveyed to M., and by M. they were disponed to A. B., by disposition and assignation dated , conveying to him the procuratory of resignation in the Earl of O.'s disposition, still unexecuted.

The present fignature proceeds on the unexe-

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be ed cuted procuratory of relignation in the Earl's disposition, and the above transmissions of it in favour of A. B., and it will be revised by the Earl of O.'s charter in the 1746.

Brief for revising the Signature of Confirmation of the Lands of in favour of L. M., Esq.

The lands of , contained in the abovementioned fignature, belonged to W. S., holden
by him of his Majesty, conform to charter under the great seal, of date , and infestment
thereon, dated and registered , and were
by him disponed to L. M., by disposition containing an obligation to infest the said L. M. by
two manners of holding, either a me or de me,
and containing also procuratory of resignation
and precept of sasine for completing either of
the said infestments. This disposition is dated the day of

In virtue of the precept of fasine contained in the said disposition, L. M. was insest on the , and his sasine recorded.

The present signature is a signature of confirmation of that disposition and sasine, and will be revised by the crown charter abovementioned in savour of the said W. S.

It may happen that the lands contained in

the fignature are described by names different from those in the former charter. Where this happens, it is sufficient to describe the lands by their old names, and to add the names of the new farms or divisions of the lands; and as the old description will constitute the boundary of the right, the Baron reviser will admit the new description, or the new name, without requiring further evidence. At the same time, when it can be easily done, it is the regular way to produce the proper evidence for establishing the identity of the subjects; and the following example will show you the form of the brief in such a case, as well as the nature of the evidence that it may be proper to bring forward.

"The fignature will be revised by the charter in favour of , which contains the barony of , and in particular the whole lands disponed to , excepting New Mains, which being a farm lately separated from the other parts of the barony, are not mentioned in the former crown charter; but, that it is part of the barony, is instructed by a decree of sale of the Court of Session, of date , and likewise by a decree of the Commissioners of Supply, dividing the valued rent of the barony on the several lands comprehended under it."

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The Baron who is to revise the signature comes into Court on the day appointed for revising, alongst with the presenter of signatures. The title deeds are laid before him, and the writer to the signet presents the brief to him, and then turns up the dispositive clause of the Crown charter, with which the signature is to be revised, and which he has previously marked that there may be no confusion and no difficulty in finding the description of the lands. This description of the lands the Baron looks over, while the reviser of signatures reads the dispositive clause of the signature. In the same way the reddendo is pointed out and compared.

This being done, the Baron reviser signs every page but the last, thereby preserving evidence of the identity of the signature which he has revised, for the satisfaction of the whole Barons, when it comes to receive their sanction. He also puts his name on the back of the signature.

After the fignature has been revised, and the form of the new charter settled and approved of by the Baron reviser, a day is fixed for giving the consent of the Barons to the fignature, and in the case of a fignature of resignation for receiving the resignation; for what has passed

hitherto is nothing more than an examination of the right, in order to guard against any thing that might affect the interest of the Crown.

But previous to the day appointed for receiving refignation and giving confent to the fignature, the composition is struck and paid. In striking the composition, that of a purchaser is estimated at one-sixth of the valued rent of the lands, as shall be certified by a certificate of two commissioners of supply, and the collector of the cess for the county, or by the valuation book in exchequer.

This composition is ascertained by the auditor and presenter of signatures, and by the Baron reviser; it is then marked on the signature, and signed by the Baron. The writer to the signet ought also to be present at striking the composition; and after it is marked on the signature it is paid to the presenter of signatures, who delivers it to the receiver general of the land tax, and procures his receipt for it on the signature.

The fignature is now prepared for receiving the authority of the whole Barons, and is marked and presented by the proper officer; but the Barons, in the case of a charter of resignation, possess no authority, until the estate shall have been resigned in their hands: For, as it is the

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refignation of the vassal which restores the estate to the superior, and entitles him to give it out of new, it is by the resignation only that the Barons are authorised to give a warrant for passing a charter of resignation.

This refignation takes place on the last day of the term, and a note for refigning is made up and put into the hands of the macer, by whom the refignation is to be made. It is in these words:

"I, one of the ordinary macers of exchequer, as procurator for , do hereby RESIGN ALL and WHOLE the lands of , lying in the parish of and shire of , IN FAVOURS OF, and for new infestments to be granted to , conform to the procuratory of resignation specified in the charter to be expede hereon."

This note is figned by the macer, and he appears in the presence of the Lord Chief Baron and other Barons, and makes refignation, by presenting a pen (as a substitute for the baton) to the Lord Chief Baron, or, in his absence, to the Baron who presides; and this being returned to the macer, as attending for the resignatory, instruments are taken in the hands of a notary public, on the part of the resignatory, and the whole procedure expressed in a notorial

instrument, such as I formerly had occasion to lay before you in the case of a subject superior, page 226.

This instrument is figned by the notary, who adds his long docquet; but the subscriptions of the witnesses are not required, for they are commonly the officers of court.

It is by this refignation, as I have already obferved, that the Barons are empowered to give
their authority to the fignature of refignation;
and therefore, after that ceremony has been
gone through, it is figned by the Lord Chief
Baron, and by the other Barons. The fignature of confirmation requires no fuch ceremony,
the reason of which must be obvious from the
remarks which I formerly made on the charter
of confirmation by a subject superior, p. 199.

In giving their authority to the fignature, whether it be a fignature of refignation or of confirmation, the subscription of the Baron reviser on the back of the fignature, and on each page of the fignature but the last, proves the identity of the fignature which had been revised, and prevents the possibility of any change on it: But as the fignature is truly an order in name of his Majesty, and was anciently superferibed by the King, this part of the form is still supplied, by affixing the cashet at the top

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of the fignature. This cashet is a stamp containing an impression of the King's name, and resembling in the closest manner his hand-writing; in short, it forms a complete fac simile of his superscription. It is in the custody of a particular officer; and after the signature has been subscribed by the Barons, is affixed by that officer to the top of the signature, in that space which is left for it on the first page of the signature.

This we may consider as the first stage in the business; the signature has now become a complete warrant for the charter, and it contains the terms in which the charter is ultimately to be granted. But in place of being received as the immediate warrant of the charter (excepting in the case of church lands under 1001. Scots of valuation, as formerly taken notice of), we find a system of warrants and precepts interposed betwixt the signature and the charter, intended, the one as a check on the other, and the whole as preserving evidence of the terms of the grant.

There was a period in the forms of testing deeds, when the seal of the granter was received as evidence of the grant. In Crown grants of land, previous to the Union, the great seal of Scotland was the evidence of a complete char-

ter; at the Union, that feal was laid afide, and a new feal was made to supply its place; and it is by this feal that the charter ought now to be authenticated, though the practice of really appending the feal feems to be dropped. But previous to the charter's paffing this feal, there are two other feals through which the warrants of it must pass: 1st, The signet, and, 2d, The privy feal; and in the office of each of these feals the fuccessive warrants are recorded. Thus there are three steps in passing a charter through There is first a precept under the fignet, which passes upon the fignature. fignet precept authorises the next warrant, which is a precept under the privy feal; and this precept under the privy feal is directed to the keeper of the great feal, and authorifes the charter itself. Having passed through these three feals, the fignet, the privy feal, and the great feal, at each of which the warrants are recorded, the charter is complete.

But I proceed to the forms. The fignature is recorded by the King's remembrancer in Exchequer, and a copy of the fignature is made and left with him for that purpose. The last words of the fignature are, "Ordain precepts to be directed thereon;" and I shall give the form of a precept on a fignature of refignation and confirma-

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tion, with a clause of union, which will sufficiently answer for all other forms, as the precept is a mere translation of the signature, with the addition of the few words of style by which the precept is begun and closed, and which remain always the same.

PRÆCEPTUM Supra SIGNATURAM RESIGNATI-ONIS et CONFIRMATIONIS in favorem L. M. Armigeri.

Georgius, Dei gratia, Magnæ Britanniæ, Franciæ et Hiberniæ Rex, Fideique Defenfor, confiso et PRÆDILECTO nostro conciliario, Armigero, figilli nostri fecreti in Scotia custodi, falutem: Sciatis quod nos, cum AVISAMENTO et CONSENsu A. Armigeri, Domini Capitalis Baronis Scacarii nostri in illa parte Magnæ Britanniæ Scotia vocat. B. C. D. et E. Armigerorum, remanen. Baronum nostræ Curiæ Scacarii prædict. DEDIMUS, CONCESSIMUS, et DISPOSUIMUS, et pro nobis, nostrisque regiis successoribus pro perpetuo CONFIRMAVIMUS, ficuti nos, cum avisamento et consensu prædict. tenore præsentium DAMUS, CONCEDIMUS, et DISPONIMUS, ac pro nobis, noftrifque regiis fuccessoribus pro perpetuo con-

FIRMAMUS, DILECTO NOSTRO I. M., ejufque hæredibus et affignatis quibuscunque, hæreditarie et irredeemabiliter, TOTAS et INTEGRAS, &c. QUE-QUIDEM TERRÆ hæreditarie pertinuerunt (virtute confirmationis in his presentibus concess.) ad W. S. tent. per illum de nobis, et dispositæ fuerunt per dict. W. S. ad dict. L. M. ejusque prædict. per dispositionem continen. procuratoriam resig. nationis de data , ET QUÆQUIDEM terræ. virtute dict. procuratoriæ refignationis, debite et legitime RESIGNATÆ FUERUNT in manibus dict. Domini Capitalis Baronis, pro feipso et in nomine remanentium Baronum nostræ dict. Curiæ Scacarii, potestatem haben. resignationis, recipiendi et desuper nova infeofamenta concedendi, tanquam in manibus nostris, pure et simpliciter per fustim et baculum, uti moris est, IN FAVOREM proque novo infeofamento earund. faciend, dand, et concedend, dict. L. M. hæredibus et affignatis ejus quibuscunque, hæreditarie et irredeemabiliter, in debita et legitima forma sicuti authentica instrumenta desuper fuscepta in manibus notarii publici, de data harum præsentium latius proportant: ET INSUPER nos VOLUMUS et ORDINAMUS, ac pro nobis nostrisque regiis successoribus DECLARAmus, quod fasina, vel fasinæ, nunc, et omni tempore futuro, per prædict. L. M. vel ejus præ-

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dict. apud maneriei locum de , vel fuper fundum alicujus alterius partis terrarum antea disposit. capienda per traditionem terræ et lapidis fundi dict. terrarum, solummodo, fine necessitate ullius alterius symboli, est et erit tam valida et sufficiens sasina pro terris decimis aliifque fupra disposit. cum pertinen. earund. vel pro ulla parte aut portione earund. quafi particularis fafina fuper unamquamque partem et portionem earund. et per traditionem omnium usitat. fymbolorum suscepta efset; non obstan. quod eædem sint diversarum denominationum jacent, discontigue et ex natura differentes fafinas fymbola, et folemnitates requirerent. Quocirca, et cum omnibus aliis defectis et exceptionibus, quæ ullo modo contra validitatem aut formalitatem dict. fasinarum objici poterint, NOS DISPENSAVIMUS, et tenore præsentium, pro nobis nostrisque regiis succesforibus in perpetuum DISPENSAMUS: TENEN. et HABEN. TOTAS et INTEGRAS terras, aliaque cum pertinen. suprascript. per dict. L. M. ejusque prædict. de nobis nostrisque regiis successoribus, immediatis legitimis superioribus earund. in libera alba firma feodo et hæreditate pro perpetuo, per omnes rectas metas fuas antiquas et divisas prout jacent in longitudine

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et latitudine, &c., in domibus, ædificiis, &c. libere, quiete, &c. REDDENDO inde annuatim dict. L. M. ejusque prædict. nobis nostrisque regiis fuccessoribus, immediatis legitimis superioribus earund. fummam, &c. IDQUE pro omni alio onere, exactione, demanda, seu servitio seculari quæ ex dict. terris, aliifque fuprascript. vel ex aliqua parte vel portione earund. exigi possint. Et PRÆTEREA, nos, cum avisamento et consensu prædict. RATIFICAMUS et APPROBAMUS, proque nobis nostrifque regiis successoribus pro perpetuo CONFIRMAMUS, DISPOSITIONEM de daper A. B. ad dict. W. S. concess. per quam vendidit et disposuit ad dict. W. S. hæredibus et affignatis ejus hæreditarie et irredeemabiliter, TOTAS et INTEGRAS terras, aliaque fupra mentionat. sese obligans infeodare dict. W. S. vel ejus prædict. in dict. terris duobus infeofamentis et modis tenendi: AC ETIAM IN-STRUMENTUM SASINÆ in favorem dict. W. S. sequen. super præceptum in dict. dispositione content, de data et registratum integris capitibus, articulis, claufulis et contentis earund. Et nos, cum confensu et avisamento prædict. DECLARAMUS hanc confirmationem tam validam et sufficientem fore, et tantam vim, robur et effectum habere, quasi dispositio prædict.

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et præceptum sasinæ inibi content. et instrumentum fasinæ desuper sequen. de verbo in verbum in hac insererentur, et quasi hæc confirmatio ante susceptionem dict. sasinæ concessa effet; QUOCIRCA, ac cum omnibus aliis objectionibus, vel imperfectionibus, quæ ullo modo contra validitatem earund. vel hujus confirmationis ejusdem, objici poterint NOS DISPENSAVI-Mus, tenoreque præsentium in perpetuum Dis-PENSAMUS: VOBIS ICITUR PRÆCIPIMUS, firmiterque MANDAMUS, quatenus visis præsentibus indilate præceptum nostrum sub dict. secreto sigillo nostro, pro charta nostra, sub figillo nostro ordinat, per Tractatum Unionis custodiend. et utend. in hac parte regni nostri Scotia vocat. vice et loco magni figilli ejufd. fuper præmissis in majori forma capellæ nostræ conficiend. dicti figilli custodi debite dirigatis. DATUM sub signeto nostro, apud Edinburgum, die, &c. et regni nostri anno. &c.

Per fignaturam figno vice manus S. D. N. Regis fuprafignatum, manibusque Domini Capitalis Baronis et remanen. Baronum prædict. Scaccarii subscript.

(Signed by a writer to the signet.)

This precept is prepared by a clerk to the fignet, and is figned by him. The fignature is N n

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its warrant, and the two ought to correspond. On producing these at the fignet office, the precept is figneted, and the fignature retained in the fignet office as the warrant of the precept which has been figneted. This precept is directed to the keeper of the privy feal, and concludes with a command to iffue a precept under the privy feal to the keeper of the great feal, for making out a charter under the form of chancerv. It is then carried to the writer to the privy feal, who makes out the precept to the keeper of the great feal, in the manner above directed. The writer to the privy feal then records this precept to the keeper of the great feal in the privy feal register, and the two, that is, the precept under the fignet and the precept under the privy feal are carried to the keeper of the privy feal, who marks the privy feal precept, " Sealed at Edinburgh the day of and figns it. He then delivers it to the party, keeping the precept under the fignet as his warrant.

This privy feal precept is a warrant to the director and clerks of chancery to make out the charter. The charter is written in a character peculiar to chancery, and is recorded in the register, and marked by the director, "Written to the feal, and registered the day of ."

The charter and privy seal precept is then taken to the keeper of the great seal, who marks it, "Sealed at Edinburgh the day of ," and ought to append the great seal to it. The privy seal precept is left at this office.

It is in this manner that the crown charter is completed; and you will observe, that besides the charter itself, there are three warrants, and each of these warrants recorded, all capable of proving the contents of the charter, every one of which must agree, unless there has been fome blameable negligence, or fome fraud. Thus, there is the fignature which is recorded by the King's remembrancer, while the principal is retained in the fignet office; there is the precept under the fignet, which is recorded by the writer to the privy feal, and the principal left with the keeper of that feal, and there is the precept under the privy feal recorded by the keeper of chancery, and the principal retained by the keeper of the great feal; fuch is the fystem which has been devised for securing the interest of the Crown, and eventually the interest of the vasfal, by preserving evidence of the nature and terms of the grant.

All that the conveyancer has to do with the form has been already explained; and to him the terms of the charter are familiar; but it will

not be disagreeable to those who have less opportunity of perusing real deeds, to see in what shape this charter appears, after having gone through so many forms.

Charter from the Crown.

Georgius, Dei gratia, Magnæ Britanniæ, Franciæ, et Hiberniæ Rex, Fidei Defensor: Omnibus probis hominibus totius terræ suæ clericis et laicis salutem sciatis, nos, cum avisamento et confensu Jacobi Montgomery, Armigeri, Domini Capitalis Baronis Scaccarii in illa parte regni nostri Magnæ Britanniæ Scotia vocat. Honorabilis Fletcheri Norton, Johannis Dalrymple Hamilton M'Gill, Equitis, Cosmonii Gordon, et Archibaldi Cockburn, Armigerorum, remanen. dict. nostri Scaccarii Baronum, DE-DISSE, CONCESSISSE, DISPOSUISSE, et hac presenti charta nostra confirmasse, tenoreque ejusdem DARE, CONCEDERE, DISPONERE, proque nobis nostrifque regiis successoribus pro perpetuo CONFIRMARE, dilecto nostro L. M., Armigero, ejusque hæredibus et affignatis quibuscunque, hæreditarie et irredeemabiliter, TOTAS et INTEGRAS terras de , cum pertinen. ea-· rund. jacen infra parochiam de vicecomitatem de ; QUAQUIDEM TERRÆ hæreditarie pertinuerunt (virtute confirm
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firmationis in his presentibus concess.) ad W. S. tent. per illum de nobis, et dispositæ fuerunt per dict. W. S. ad dict. L. M. ejusque prædict. per dispositionem continen, procuratoriam resignationis de data , ET QUEQUIDEM terræ, virtute dict. procuratoriæ refignationis, debite et legitime RESIGNATÆ FUERUNT in manibus dict. Domini Capitalis Baronis, pro seipso et in nomine remanentium Baronum nostræ dict. Curiæ Scacarii, potestatem haben. resignationis, recipiendi et desuper nova infeofamenta concedendi, tanguam in manibus nostris, pure et simpliciter per fustim et baculum, uti moris est, IN FAVOREM proque novo infeofamento earund. faciend. dand. et concedend. dict. L. M. hæredibus et affignatis ejus quibuscunque, hæreditarie et irredeemabiliter, in debita et legitima forma sicuti authentica instrumenta desuper fuscepta in manibus notarii publici, de data harum præsentium latius proportant: ET INSUPER nos VOLUMUS et ORDINAMUS, ac pro nobis nostrisque regiis successoribus DECLARA-MUS, quod fafina, vel fafinæ, nunc, et omni tempore futuro, per prædict. L. M. vel ejus prædict. apud maneriei locum de super fundum alicujus alterius partis terrarum antea disposit. capienda per traditionem terræ et lapidis fundi dict. terrarum, solum-

modo, fine necessitate ullius alterius symboli. est et erit tam valida et sufficiens sasina pro terris decimis aliifque fupra disposit. cum pertinen. earund. vel pro ulla parte aut portione earund. quasi particularis sasina super unamquamque partem et portionem earund. et per traditionem omnium usitat. fymbolorum suscepta esset; non obstan. quod eædem sint diversarum denominationum, jacent, discontigue, et ex natura differentes fafinas fymbola, et solemnitates requirerent. Quocirca, et cum omnibus aliis defectis et exceptionibus, quæ ullo modo contra validitatem aut formalitatem dict. fasinarum objici poterint, NOS DISPENSAVIMUS, et tenore præsentium, pro nobis nostrisque regiis succesforibus in perpetuum DISPENSAMUS: TENEN. et HABEN. TOTAS et INTEGRAS terras, aliaque cum pertinen. suprascript. per dict. L. M. ejusque prædict. de nobis nostrisque regiis successoribus, immediatis legitimis superioribus earund. in libera alba firma feodo et hæreditate pro perpetuo per omnes rectas metas fuas antiquas et divisas prout jacent in longitudine et latitudine, in domibus, ædificiis, hortis, pomariis, bofcis, planis, moris, marefiis, viis, femitis, aquis, stagnis, rivolis, pratis, pascuis, et pasturis, molendinis multuris et eorum sequelis, aucupationibus, venationibus, piscationibus, pe-

tariis cuni brasi gulti cum witis liber fingt bus, cunc fub t ad pi fpec: in fu nori cont qual ejuso forib fum mine annu alio cular vel

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tarlis, turbariis, carbonibus carbonariis, cuniculis cuniculariis, columbis columbariis, fabrilibus, brasinis, brueriis, genistis, filvis, nemoribus, virgultis, lignis, tignis, lapicidiis, lapide, et calce, cum curiis, et earum exitibus, hærezeldis, bloodwitis, ammerciamentis, cumq. communi pastura, liberoque introitu et exitu, ac cum omnibus et fingulis aliis libertatibus, proficuis, immunitatibus, asiamentis, et justis suis pertinen. quibuscung, tam non nominat, quam nominat, tam sub terra, quam supra terram, procul et prope, ad prædict. terras aliaque præscript. cum petinen. spectan. seu juste spectare valen. quomodolibet in futurum, libere, quiete, plenarie, integre, honorifice, bene et in pace, fine ulla revocatione, contradictione, obstaculo, seu impedimento aliquali. REDDENDO inde annuatim dict. L. M. ejusque prædict. nobis nostrisque regiis succesforibus, immediatis legitimis superioribus earund. fummam unius denarii, monetæ Scotiæ, nomine albæ firmæ, apud festum Pentecostes annuatim, si petatur tantum; IDQUE pro omni alio onere, exactione, demanda, seu servitio seculari quæ ex dict. terris, aliisque suprascript. vel ex aliqua parte vel portione earund. exigi possint. Et præterea, nos, cum avisamento et consensu prædict. RATIFICAMUS et APPROBAMUS, proque nobis nostrifque regiis successoribus pro

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perpetuo CONFIRMAMUS, DISPOSITIONEM de daper A. B. ad dict. W. S. concess. per quam vendidit et disposuit ad dict. W. S. haredibus et affignatis ejus hæreditarie et irredeemabiliter, TOTAS et INTEGRAS terras, aliaque fupra mentionat. sese obligans infeodare dict. W. S. vel ejus prædict. in dict. terris duobus infeofamentis et modis tenendi: AC ETIAM IN-STRUMENTUM SASINÆ in favorem dict. W. S. sequen. super præceptum in dict. dispositione content. de data et registratum IN integris capitibus, articulis, claufulis et contentis earund. Et nos, cum consensu et avisamento prædict. DECLARAMUS hanc confirmationem tam validam et sufficientem fore, et tantam vim, robur et effectum habere, quasi dispositio prædict. et præceptum fasinæ inibi content. et instrumentum sasinæ desuper sequen. de verbo in verbum in hac infererentur, et quasi hæc confirmatio ante susceptionem dict. sasinæ concessa effet; QUOCIRCA, ac cum omnibus aliis objectionibus, vel imperfectionibus, quæ ullo modo contra validitatem earund. vel hujus confirmationis ejusdem, NOS DISPENSAVIMUS, tenoreque præsentium in perpetuum DISPENSAMUS, INSUPER vicecomiti et balivi fuis de non dilectis nostris

et vestrum cuilibet conjunc-

im et divisim vicecomitibus nostris vicecomi-, in hac parte specialiter constitut. SALUTEM, vobis PRÆCIPIMUS et MANDAMUS quatenus præfat. L. M., vel suo certo actornato latori præsentium, sasinam omnium et singularum præfat, terrarum, aliorumque fupra disposit. cum omnibus earundem pertinen. jacen. ut præfertur, secundum formam et tenorem antedict. Cartæ nostræ quam de nobis inde habet et dispensationis prædict. juste haberi faciatis, sine dilatione; et hoc nullo modo omittatis, ad quod faciendum, vobis et vestrum cuilibet, conjunctim et divisim, vicecomitibus nostris vicecomi-, in hac parte antedict. committimus potestatem. In cujus REI TESTIMONIUM, huic præfenticartæ nostræ figillum nostrum per Unionis Tractatum custodiend. et in Scotia vice et loco magni figilli ejusdem utend. ordinat, appendi mandavimus, TESTIBUS prædilectis nostris, Domino Frederico Campbell, nobis ab archivis et registris clerico, Thoma Miller de Barskimming, Armigero, nostræ justitiariæ clerico, et Domino Jacobo St. Clair Erskine de St. Clair, Baronetto, nostræ cancellariæ directore, apud Edinburgum die mensis anno Domini regnique nostri

Written in Chancery hand.

Written to the feal, and registered the day of 1797.

THOMAS MILLER, Subt.

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Sealed at Edinburgh this day of one thousand seven hundred and ninety-seven years.

CHAS. GORDON, L. Scots.

The charter from the crown is completed by fasine, in the same manner with the charter from a subject superior; and as the warrant is in Latin, it is the practice to make out the sasine in the same language. After the examples which I have given of this instrument, I shall not trouble you with any other form than that of the sasine on the preceding crown charter.

In Dei nomine, Amen. Per hoc presens publicum instrumentum cunctis pateat evidenter et sit notum, 2000 anno Domini regnique S. D. N. Georgii Tertii, Dei gratia, Magnæ Britanniæ, Franciæ, et Hiberniæ Regis, Fideique Desensoris, anno mensis vero die

, IN MEI notarii publici et testium subscriben.

præsentia personaliter comparuit tanquam actornatus pro ac in nomine L. M. spe-

cialiter constitutus, cujus procuratoriæ potestas mihi notario publico fubscribenti lucide constabat, ET cum tanquam vicecomite in hac parte vicecomitatus de per præceptum fasinæ sub insert. specialiter constituto, ad maneriei locum de virtute claufulæ difpensationis infra mentionat. nobiscum accessit, HABENS et in suis manibus TENENS quandam CHARTAM RESIGNATIONIS et CONFIRMATIONIS fub figillo per Unionis Tractatum custodiend. et in Scotia vice et loco magni figilli ejusdem utend. ordinat. de data infra script. et præceptum sasinæ fub insert. in se continen. PER QUAM CHARTAM dict. S. D. N. Rex, cum confensu Dominorum Baronum sui Scaccarii in Scotia DEDIT, CON-CESSIT, et DISPOSUIT, ac pro se suisque regiis successoribus in perpetuum confirmavit, dicto L. M. ejusque hæredibus et affignatis quibuscunque, hæreditarie et irredeemabiliter, TOTAS et INTEGRAS, &c. ET per dict. cartam ORDINATUR et DECLARATUR, quod fafina vel fafinæ nunc et omni tempore futuro per dict. L. M. vel ejus prædict. apud maneriei locum de per fundum alicujus partis terrarum inibi et antea mentionat. capiend. per traditionem terræ et lapidis fundi dict. terrarum solummodo, fine necessitate ullius alterius symboli, est et erit tam valida et sufficiens sasina pro terris de-

cimis aliifque supra et inibi mentionat. cum pertinentibus earund. vel pro ulla parte aut portione earund. quasi particularis sasina super unamquamque partem et portionem earund. et per traditionem omnium usitat. fymbolorum suscepta fuisset non obstan. quod eædem sint diversarum denominationum, jacent discontigue, et ex natura, differentes sasinas, symbola, et solemnitates requirirent: QUOCIRCA, et cum omnibus aliis defectis et exceptionibus quæ ullo modo contra validitatem aut formalitatem dict. sasinarum objici poterint, dict. S. D. N. in perpetuum dispensavit, TENEND. et HABEN. TOTAS et INTEGRAS terras aliaque, cum pertinen. per dict. L. M. ejusque prædict. de dict. S. D. N. Rege, ejusque regiis successoribus, in libera alba firma feodo et hæreditate in perpetuum uti dict. carta continen. præceptum fafinæ fubinsert. diversasque alias clausulas latius proportat. QUAMQUIDEM CARTAM. dict. actornatus EX-HIBUIT, et dict. vicecomiti in hac parte uti præfertur legitime constituto OBTULIT, eumque rogavit, ut officium per dict. sasinæ præceptum sibi commissium debite præstaret, QUEM-QUE ROGATUM dict. vicecomes percipiens esse justum rationique consonant. dict. cartam in manibus suis RECEPIT, et mihi notario publico fubscribenti perlegend. et in vulgari sermone

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testibus astantibus explicand. tradidit: Quod FECT et cujus præcepti sasinæ content. in dict. carta tenor sequitur, et est talis: "Insuper vicecomiti" et balivis suis de nec non dilectis nos-

et vestrum cuilibet, conjunctim et " divisim, vicecomitibus nosfris vicecomitat. de in hac parte specialiter constitut. salu-" TEM vobis præcipimus et mandamus quate-" nus præfat. L. M. vel suo certo actornato, la-" tori præfentium fasinam omnium et singula-" rum præfat. terrarum decimarum, aliorumque " fupra disposit. cum omnibus earund. perti-" nentibus jacen. ut præfertur, fecundum for-" mam et tenorem antedict. cartæ nostræ quam " de nobis inde habet, et dispensationis prædict. " juste haberi faciatis sine dilatione; ET hoc " nullo modo omittatis, ad quod faciendum " vobis et vestrum cuilibet, conjunctim et di-" visim, vicecomitibus nostris vicecomitat. de in hac parte ante dict. committimus " potestatem; IN CUJUS REI TESTIMONIUM, huic " præsenti cartæ nostræ sigillum nostrum per " Unionis Tractatum custodiend. et in Scotia " vice et loco magni figilli ejusdem utend. or-" dinat. appendi mandavimus, testibus præde-" licto nobis ab archivo et registris cle-" rico, et prædelicto nostræ justiciariæ

" clerico et Armigero, nostræ cancellariæ " directore, APUD EDINBURGUM die men-" fis anno Domini regnique nostri " anno (Sic fubscribitur). Written to the " feal, and registered the day of " 1797. Thomas Miller, Subt. Sealed at Edinburgh, this day of one thou-" fand feven hundred and ninety-feven. Chas. "Gordon, L. Scots." Post cujus cartæ antea recitat. et præcepti fasinæ inibi content. et antea insert. perlectionem et in vulgari sermone testibus astantibus explicationem, præfatus VICECOMES, virtute dict. cartæ, præceptique safinæ et clausulæ dispensationis inibi content. et officii per idem sibi commissi præfato L. M. STATUM et SASINAM hæreditariam, pariterque possessionem actualem, realem et corporalem totarum et integrarum terrarum decimarum aliorumque in dict. carta specificat. et disposit. per traditionem terræ et lapidis fundi did. terrarum in manibus dict. actornati pro et in nomine dict. L. M. DEDIT, TRADIDIT, pariterque DELIVERAVIT, secundum formam et tenorem dict. cartæ et præcepti sasinæ supra insert. in omnibus: Super Quieus omnibus et singulis præmissis præfatus actornatus a me notorio publico subscribente hoc instrumentum fibi fieri petiit. ACTA ERANT HEC

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ad maneriei locum de virtute clausulæ dispensationis in dict. carta specificat. horas inter et die mensis anno Domini, S. D. N. regnique, supra specificat. PRÆSENTIBUS ibidem et testibus ad præmissa specialiter rogatis et requisitis.

This fasine is subscribed by the witnesses, and the notary subjoins his long doquet and subscription in the common form. The sasine, as the precept on which it proceeds is directed in general "dilectis nostris," may be given by any person as bailie, and any notary may act as notary to it, which is not the case in sasines on precepts from the crown in favour of heirs; for there, in order the better to secure the non-entry and relief duties payable on the entry of heirs, the same must be delivered by the sheriss, and the sheriss-clerk alone can act as notary.

IV. VARIETIES IN THE FORM OF THE DISPOSI-

In the preceding fections of this title, I have endeavoured to explain those forms by which

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property is conveyed to a purchaser, and by which the right of the purchaser is completed. whether the lands hold of a subject or of the crown. There remain still fome varieties in the disposition, arising from different causes, and with which it would have been improper to have confounded our first view of the purchaser's title. These varieties I shall include under the following heads :_____1. The disposition by a fuperior to his vasfal. 2. The disposition by the vassal to his superior. 3. The disposition of teinds. 4. Of patronages. 5. Of fishings. 6. Deeds with real warrandice, as excambion and disposition conveying warrandice lands. And, lastly, Deeds relative to burgage This will complete the view which at present I mean to give of the subject; and dispofitions of a bankrupt estate, conveyances of real burdens, or of diligence, as well as deeds of mortification, will find their proper places elsewhere.

1. Disposition by a Superior to his Vassal.

The first case is that of a disposition by a superior to his vassal, and this differs (in point of form) very immaterially from the common disposition. The lands, we are to presume, are al-

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ready held by the purchaser base of the seller; therefore all that remains to be done, is to enable the purchaser to hold of the seller's superior, and this may be attained either by refignation or confirmation. But here it is necessary for you to recollect in what fituation a purchaser flood, when, by the old forms, he held a charter a me, and a charter de me, previous to the invention of the indefinite sasine. The present case is precisely that of a purchaser who stood infeft on an old charter de me, and who was to obtain his entry with the superior on the feller's charter a me, and without attending to the distinction betwixt the ancient and modern form of conveyance, and which I endeavoured to explain, page 193, &c., the purchaser's title in the present case will not be perfectly underflood.

The purchaser stands already insest in the property of the subject on a seu right granted with an intention of reserving the domnium directum in the granter. The base right held by the purchaser does not admit of being converted into a public one by any act on the part of the mediate superior, nor indeed can the immediate superior, the person who is to sell the superiority to the vassal, make any change on that right as it stands on the former disposition. It

remains a base right, carrying the property to the vasfal, but referving the superiority to the fuperior. In order, then, to put this vaffal into the place of his fuperior, the fuperior, who is the feller, must dispone to him the lands, to be holden of his the feller's fuperior; and for completing this title he will grant both a procuratory of refignation, and also a precept of saline, for giving infeftment to be holden of the granter's fuperior; which, in other words, is just faying, that he will grant to the purchaser a disposition, coming in effect, if not precifely in form, to the old charter, a me de superiore meo. Indeed, with regard to the form of the disposition, it differs, as I have already observed, very little from the common disposition, as you will perceive in the style which I am to lay before you.

Disposition by the Superior to bis Vasfal.

I, A., immediate lawful superior of the lands and others underwritten, IN CONSIDERATION of a certain sum paid to me by B., my vassal in the faid lands, as the full and adequate price of the right hereby given, of which sum I grant the receipt, and discharge the same for ever, have SOLD, ALIENATED, and DISPONED, as I hereby SELL, ALIENATE and DISPONE, to and in favour

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of the faid B., his heirs and affignees whomfoever, heritably and irredeemably, ALL and WHOLE (Describe the lands), with all right, title, interest, claim of right, property and possession, as well petitory as possessory, which I, my predecessors and authors, heirs and fucceffors, had, have, or anywife may claim or pretend thereto in all time coming; IN WHICH lands and others above disponed, I BIND and OBLIGE me and my forefaids TO INFEFT and SEISE the faid B. and his abovewritten, on their own expence, by a fingle infeftment only, TO BE HOLDEN of my immediate lawful fuperior of the faid lands, by the fame tenure, and for payment of the same services, and as freely in all refpects as I or my foresaids held or might have holden the fame ourselves, and to grant and subscribe all deeds or writings that may be necesfary for that effect: AND in order to complete the faid infeftment by refignation, I hereby con-STITUTE and APPOINT jointly and feverally, my lawful and irrevocable procurators, &c. (This clause goes on in common form); WHICH LANDS and others above disponed, in so far as concerns the dominium directum thereof, I BIND and OBLIGE me and my forefaids to WARRANT to the faid B. and his forefaids, at all hands and against all deadly, as law will: AND FURTHER, I hereby MAKE and CON-

STITUTE the faid B. and his foresaids my celfioners and affignees IN and To the whole writs and evidents of the faid lands, and whole clauses therein contained, with all that has followed or is competent to follow thereupon: AND I hereby RENOUNCE and for ever fimply DISCHARGE the feu duty of L. per annum, payable to me out of the lands hereby conveyed, together with the whole fervices, prestations, and casualties specified in the reddendos of the charters, or arising from the nature of the rights and titles under which the faid lands have been held of me and my foresaids, by the said B. and his predecessors, and that for all years and terms bygone and to come, SURROGATING and SUBSTI-TUTING him and his foresaids in my full right and place of the premises for ever; WHICH AS-SIGNATION and discharge abovewritten, I BIND and OBLIGE myself and my foresaids to WAR-RANT as follows, viz. the affignation to the writs and evidents at all hands and against all deadly, AND the discharge from our own facts and deeds only: AND FURTHER, I OBLIGE me and my foresaids to FREE and RELIEVE the said of all duties and casualties payable from the said lands to our immediate lawful superior therein at and preceding the term of hereby declared to be the term of the faid purpay faice DE. the figure in juccommand

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chaser's entry to the said lands, As ALSO of that proportion of the public and parochial burdens payable at the said term by me as superior foresaid, furth of these lands; AND I have herewith DELIVERED UP to the said B. the title deeds of the said lands, conform to inventory thereof signed by me of this date, as relative hereto:

AND I CONSENT to the REGISTRATION hereof in the books of Council and Session, or other judges books competent, therein to remain for preservation, and that all execution necessary may pass hereon in form as effeirs; and for that purpose CONSTITUTE

that the said B. and his foresaids may be insest in the said lands, to be holden of my said superiors thereof by confirmation, I hereby DESIRE and REQUIRE you jointly and severally my bailies in that part, hereby specially constituted, that, on sight hereof, ye pass to the grounds of the said lands, AND THERE GIVE and DELIVER to the said B, or to his foresaids, heritable STATE and SASINE, actual, real, and corporal possession of ALL and WHOLE the lands and others abovementioned, lying and described in manner foresaid, AND THAT by delivery to the said B. or his foresaids, or his or their certain attorney or attorneys, in his or their names, bearers hereof,

lands, with other fymbols necessary, TO BE HOL-BEN of my immediate lawful superior of the said lands, by the same tenure, and for payment and performance of the same duties and services that are payable by me and my foresaids, and as freely as I held the same myself, AND this on no account ye leave undone; WHICH to do I commit to you jointly and severally my sull power, by this my precept of sasine directed to you for that effect. In WITNESS whereof, &c.

The difference betwixt this and the common disposition, consists in the changes which take place in the obligation to insest, in the clause of warrandice, in the assignation to the rents, and in the precept of saline; and these changes arise necessarily from the situation of the parties.

In completing the vassal's title, he may enter with the seller's superior, either by a charter of resignation or by a charter of confirmation; but if he enters by confirmation, he must take saline on the precept in this disposition; his old infestment, on grounds which I have already explained, cannot be confirmed to the effect of making him hold of his immediate superior; but

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fasine being taken on the precept in this new disposition, that sasine may be confirmed, which will put him into the place of the seller, and make him hold directly of the person who was formerly his mediate superior. But brought thus into the place of the seller, he becomes his own superior; so that he holds the two estates by different titles; and in order to consolidate the property with the superiority, a resignation ad remanentiam by himself as vassal, to himself as superior, becomes necessary.

This refignation is of a very different nature from the refignation in favorem, on which the charter of refignation proceeds. The refignation in favorem is the form by which the vassal returns the fee into the hand of the superior, for the purpose of enabling him to renew the original right to a new set of heirs, or to a purchaser. The resignation ad remanentiam is a total extinction of the vassal's right, restoring the see into the hands of the superior, as his own property, working off the effect of the base right, and consolidating the estate formerly in the person of the vassal, with the estate in the person of the superior.

This form requires, in the first place, a warrant from the vassal, and that is contained in the procuratory of resignation; under this warrant

refignation must be made, and an instrument taken on the act of refignation. It is this inftrument which completes the title of the fupe. rior, and on that account it has been placed on the same footing with the instrument of sasine, and ordered to be entered in the record within the same time, and under the same penalties: The forms which I am now to lay before you will explain all this.

Procuratory of Resignation ad Remanentiam.

I, B., confidering that I fland vested in the property and superiority of the lands and others aftermentioned, on different titles; and that I am defirous of uniting and confolidating the property with the fuperiority in my person, do THEREFORE hereby CONSTITUTE and ORDAIN

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feverally, my procurators, for me and in my name, to compear before me, my heirs or fuccessors, as immediate lawful superiors of the lands and others herein described, or before our commissioners in our name having power to receive refignations thereof ad remanentiam, at any time and place lawful and convenient, and there, purely and fimply by staff and baton, as use is, to resign, As I by these presents RE-

SIGN and SURRENDER Simpliciter, UPGIVE, OVER-GIVE, and DELIVER, ALL and WHOLE (Here the lands are to be particularly described), with all right, title and interest which I have or can pretend to the property of the same, IN THE HANDS of me the faid B. or of my foresaids. as immediate lawful superiors of the same, ad perpetuam remanentiam, TO THE EFFECT that the right of property of the foresaid lands and others which stand in my person may be united and consolidated with my right of superiority of the fame, and remain with me and my heirs and fuccessors in the faid superiority, absolutely and irredeemably, in all time coming, ACTS, INSTRUMENTS, and DOCUMENTS in the premises, to ask and take, and generally every other thing to do as freely in all respects as I the faid B. could do myfelf, or which to the office of procuratory in fuch cases is known to pertain, promifing to ratify and confirm whatever my faid procurators thall lawfully do or cause to be done in the premises; AND I CON-SENT to the REGISTRATION hereof in the books of Council and Seffion, or others competent, therein to remain for preservation, AND for that purpose constitute procurators, &c. IN WITNESS WHEREOF, &c.

Instrument of Resignation ad Remanentiam following on the preceding Procuratory.

IN THE NAME OF GOD, AMEN. BE IT KNOWN TO ALL MEN, by this present public instrument, THAT, upon the day of and of the reign of our fovereign Lord George the Third, by the Grace of God King of Great Britain, France, and Ireland, Defender of the year, IN PRESENCE of me, notary public, and witnesses subscribing, COMPEARED , as procurator for B., heriperfonally table proprietor of the lands and others aftermentioned, specially constituted by virtue of a procuratory of refignation ad remanentiam, dat-, made and granted by the faid B. for refigning the faid lands and others aftermentioned, in favour of himself, his heirs and fuccesfors in the superiority, AND PASSED with us to the personal PRESENCE of the faid B., SUPE-RIOR of the faid lands and others, AND THERE the faid procurator, in name and behalf of the faid B., RESIGNED and SURRENDERED simpliciter, UPGAVE, OVERGAVE, and DELIVERED, ALL and WHOLE (Here the lands are particularly described); Together with all right, title, and

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interest which the faid B. had or anywise might have, claim, or pretend to the property of the faid lands and others, or to any part thereof, IN THE HANDS and in favour of the faid B., immediate lawful fuperior of the fame ad perpetuam remanentiam, TO THE EFFECT that the right of property of the faid lands standing in the person of the said B. may be confolidated with the right of fuperiority of the the same, and remain with the said B., his heirs and fuccessors in the faid superiority, absolutely and irredeemably, in all time coming, by virtue of, and conform to, the forefaid procuratory of refignation granted by the faid B. for that effect, AND THAT by deliverance made by the faid procurator of staff and baton, as use is, in the hands of the faid B., who accepted the fame; WHEREUPON, and upon all and fundry the premises, the said attorney, as procurator foresaid, asked and took instruments in the hands of me, notary public. THESE THINGS were fo done at , day, month, year of God, and of the King's reign respectively first abovewritten, betwixt the hours of and , IN PRE-SENGE of and , witnesses to the premifes fpecially called and required.

This instrument is attested by the long doquet of the notary, by his subscribing each page, and by the subscriptions of the witnesses to each page; and it must be recorded within sixty days of its date in the register of sasines.

2. Disposition by the Vasfal to his Superior.

The object of this right is to restore to the superior the property which has been given out to the vassal; and I have already shown you that the way in which this is done is for the vassal to resign the property in the hands of his superior, ad remanentiam. The disposition, therefore, by the vassal to his superior is in this form:

I, B., heritable proprietor of the lands and others aftermentioned, in virtue of a charter thereof, granted to me by A., superior of the said lands, and of a sasine following on the said charter, dated , registered , IN CONSIDERATION of a certain sum paid to me by the said A., as the price of the subjects hereby sold, whereof I grant the receipt, and discharge him thereof for ever, have SOLD, ALIENATED, and DISPONED, as I hereby SELL, ALIENATE, and DISPONED, to and in savours of the said A.

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and his heirs and fucceffors in the fuperiority of the faid lands, heritably and irredeemably, ALL and WHOLE (Herethelands are particularly described), with all right, title, interest, claim of right, property and possession, petitory or possessory, which I or my predecessors or authors had, have, or anywife can have, claim, or pretend thereto, in all time coming: AND to the effect that my right of property of the faid lands may be confolidated with the faid A.'s right of the superiority of the same, I BIND and OBLIGE me, my heirs and fuccessors, to make due and lawful RESIGNA-TION of the same in the hands of the said A., as my immediate lawful superior thereof, ad perpetuam remanentiam: AND for that end I hereby MAKE and CONSTITUTE

jointly and severally, my lawful and irrevocable procurators, for me and in my name, to compear before the said A., my immediate lawful superior of the said lands, or his commissioners in his name, having power to receive resignation ad remanentiam, at any time and place lawful; and there purely and simply by staff and baton, as use is, to RESIGN and SURRENDER, as I do hereby RESIGN and SURRENDER simpliciter, UPGIVE, OVERGIVE and DELIVER, ALL and WHOLE the said lands and others above mentioned, lying and described in manner foresaid,

together with all right, title and interest, claim of right, property and possession, which I and my predecessors and authors had, have, or any ways may have, claim, or petend to the premises, IN THE HANDS of the faid A. or of his commissioners in his name, as in his own hands, and for his own behoof, ad perpetuam remanentiam, TO THE EFFECT that the right of property in the faid lands standing in my person may be incorporated and confolidated with the right of superiority thereof in the person of the said A. and his heirs and fuccessors in the faid superiority, absolutely and irredeemably, in all time coming; ACTS, instruments, and documents in the premisses, to ask and take, and generally every other thing in the premises to do which I could have done myfelf if personally prefent, or which to the office of procuratory in fuch cases is known to pertain, PROMISING to ratify and confirm whatever my faid procurators shall lawfully do or cause to be done in the premises; WHICH LANDS and others above disponed, with the pertinents thereof, and this prefent disposition, I BIND and OBLIGE me and my foresaids to WARRANT, affure, and defend to the faid A. and his abovewritten, in fo far as regards the property or dominium utile of the faid estate, at all hands, and against all mortals.

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AND FURTHER, I hereby MAKE and CONSTI-TUTE the faid A. and his foresaids my cessioners and affignees IN AND TO the WRITS and TITLES of the faid lands, with all that has or may follow thereon, AND ALSO in and to the RENTS and DUTIES of the faid lands, due therefrom fince the term of is hereby declared to be the term of his entry to the property of the faid lands, sur-ROGATING and SUBSTITUTING him and his forefaids in my full right and place of the premifes for ever; WHICH ASSIGNATION I OBLIGE me to WARRANT, in fo far as regards the titles to the property, at all hands, and against all deadly, and in fo far as concerns the rents, from my own fact and deed only: AND I FARTHER O-BLIGE me and my foresaids to free and relieve the faid A. and his abovewritten from all feu duties, cefs, minister's stipend, and other public and parochial burdens payable from the faid. lands prior to the faid term of A. and his forefaids freeing and relieving me and my foresaids thereof in all time coming: AND I have herewith DELIVERED UP to the faid A. the charter abovementioned, which I formerly received from him, with the fafine following thereon. AND CONSENT to the REGIS-TRATION hereof in the books of Council and

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Session, or other judges books competent, therein to remain for preservation, and that all necessary execution may follow hereon in form as effeirs; and to that effect I constitute

my PROCURATORS, &c. In witness whereof, &c.

This right is completed by the instrument of resignation ad remanentiam, the form of which I need not repeat, and which is rendered effectual by registration within sixty days from its date. The effect of this resignation is not only to complete the superior's right to the property, but also to consolidate in his person the property and superiorty of the lands.

3. Sale of Teinds.

In explaining those deeds by which teinds are conveyed, it is necessary to remind you of the nature of that species of property.

Teinds belonged to the church previous to the Reformation; and the drawing of the teind, while it was the source of infinite vexation to the landholder, rendered him exceedingly dependent on the churchmen. Upon the Reformation, the church lands, and even the teinds, were understood to be the property of the Crown, and by the Crown the greater part of that property

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was given out to those of chief influence in the country, who were termed Lords of Erection, or Titulars, as having acquired a right or title to the benefice.

Under these new proprietors the same hardships were felt, which had been so unwillingly submitted to under the domination of the
church; for, with the property of the clergy,
the titulars claimed also the rights which they
had exercised. The discontents which this occasioned, as well as the value of the property
which had been thus lavished by the Crown,
induced Charles I. to raise a reduction of those
grants by which it had been given out; and
that led the way to a general submission to his
Majesty, by all parties having any interest in the
property of the church.

The decree arbitral which was pronounced by his Majesty in this submission, and which has been attended with the most happy effects to the country, fixed, amongst a variety of other matters (and it was afterwards ratified by the act 1633, c. 17.), That heritors should be at liberty to pursue the titulars for having their teinds valued, and for a warrant to purchase them at the rate of nine years purchase money of the valued teind duty. The decree arbitral fixed also the extent of the warrandice

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of the disposition to be granted by the titulars; but this point was afterwards (by the act 1633, c. 19.), left to be settled in the process of sale. The decree further provided for the case where the teinds were not in the hands of the titular, but were held in lease, or by some temporary right, and declared that, in these cases, the price should be ruled by the duration, or according to the quality of the right.

But, besides the right to the teinds vested in the titulars, and regulated by that decree arbitral, there is a right to teinds vested in patrons, which arose in this manner: The act 1469, c. 30., took away from patrons the right of presentation, and gave them, as an indemnification, all the tithes of the parish not formerly disposed of. This act was rescinded, alongst with the other acts paffed during the usurpa-But the right was again given to patrons by the act 1690, c. 23., which enacts, that the right to those teinds which had not been heritably disponed should belong to patrons, "with " the burden always of the minister's slipend, " tacks and prorogations already granted of the " faid lands, and of fuch augmentations of sti-" pend, future prorogations and erections of " new kirks as shall be found just and expe-" dient, providing the faid patrons, getting

"right to the teinds by virtue of this present act, and who had no right thereto before, fhall be, likeas, they are hereby obliged, to fell to each heritor the teinds of his own lands, at the rate of fix years purchase, as the same shall be valued by a commission for valuation of teinds."

Thus the heritor is entitled to purchase his teinds from the titular at nine, and from the patron, where he is not titular, at six years purchase. But there are certain teinds which form an exception to this, and which cannot be purchased, as, 1. Teinds which have been granted to colleges or hospitals, or mortised, or destined for pious uses. 2. Teinds which formerly belonged to bishops, and thereafter to the Crown, by the abolition of Episcopacy, so long as the said lands shall remain with the Crown undisposed of. 3. Teinds which have once come into the hands of the heritor, and who has afterwards seued out the lands without the teinds.

The rates of nine and fix years teind duty, at which these purchases may be made, are much below the value of the teinds, were they not subject to the burden of providing a stipend to the minister of the parish, which is a burden inherent in teinds; and accordingly, when a

transaction takes place with the person in right of the teinds, and he engages to warrant the purchaser against all future augmentations and grounds of eviction, an advanced price is paid by the purchaser. The sale of teinds may therefore either be legal or voluntary. It may proceed in terms of the above acts of parliament, which will regulate the price and the extent of the warrandice; or it may be a voluntary sale, in which the price and warrandice are commensurated to each other by the private agreement of the parties. I shall first lay before you the form of the legal, and then the form of the voluntary, sale.

Preliminary Steps in a Legal Sale of Teinds.

Where teinds have been previously valued, the action brought against the titular or patron will be for a sale merely; but I shall suppose that there has been no valuation, in which case there will be a summons of valuation and sale of teinds raised, citing those who have interest to appear before the Judges of the Court of Session, as Commissioners for the plantation of kirks and valuation of teinds. The summons will be in this form:

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Summons of Valuation and Sale of Teinds.

GEORGE, by the grace of God, King of Great Britain, France, and Ireland, Defender of the messengers Faith, To at arms, our sheriffs in that part, jointly and feverally specially constituted, greeting: WHEREas it is humbly meant and shown to us by our LOVITE A., heritable proprietor of the lands and others underwritten (Here describe the lands), in which lands the purfuer stands duly infest, in virtue of his fasines therein, dated , and regiflered, THAT, by several acts of parliament, and particularly by the 30th act of the 2d fession of the 1st parliament of King William and Queen Mary, holden in anno 1690, commiffion is thereby given to the Lords and others of the commission thereby appointed for the plantation of kirks and valuation of teinds, to value, and cause to be valued, the teinds, parsonage, and vicarage of whatever lands lying within this kingdom liable in payment of teinds, and to take order that every heritor have the leading and buying of his own teinds, conform to the rules laid down by the 19th act of the parliament 1633, and the other acts of parliament therein mentioned, and that each

heritor shall be at liberty to purchase his own teind from the titular or patron having right thereto; and that, by the 9th act of the parliament 1707, the Lords of Council and Seffion are empowered to judge in all affairs and causes which formerly belonged to the jurisdiction or cognizance of the commissioners formerly appointed for the plantations of kirks and valuation of teinds, and in particular to determine in the valuation and fale of teinds: That B. is titular or patron of the parish of , within which parish the said lands lie; that C. is minister of the faid parish; and that the teinds of the lands and others foresaid are still unvalued, in so far as the pursuer knows; THEREFORE a VALUATION of the TEINDS, both parsonage and vicarage, of the faid lands, with the pertinents thereof, lying as aforesaid, ought and should be led and deduced at the instance of the pursuer, against the defenders after named, and the tutors and curators of fuch of them as are minors, if they any have, for their interest, and a constant and fixed yearly duty should be determined, by decree of our faid Lords, to be the just and true value of the teinds, parsonage and vicarage of the said lands, and to be paid in place of the faid teinds; AND the faid teinds being fo valued, our faid Lords QUEHT and SHOULD modify and determine the

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price thereof, according to the respective rights of the defenders, AND fuch of them as have right thereto ought and should be DECERNED and ORDMINED, by decree foresaid, upon payment of fuch price, TO DISPONE the faid TEINDS to the purfuer and his heirs or affignees in the faid lands, heritably and irredeemably; AND, FOR THAT END, to grant dispositions containing procuratories of refignation, precepts of saline, clauses of warrandice, in such terms as the faid Lords shall determine, and all other necessary writs for that purpose, OR OTHERWISE, in case the said defenders shall fail, or refuse so to do, the teinds, parsonage and vicarage of the faid lands ought and should be ADJUDGED and decerned, by decree foresaid, to pertain To the pursuer and his forefaids, heritably and irredeemably, upon payment or confignation of the price put thereon in manner foresaid: AND it OUGHT and SHOULD be further FOUND and DECLARED, That the purfuer and his forefaids, on payment or confignation of the faid price, have good and undoubted right to draw and collect the whole teinds, parsonage and vicarage of the said lands and pertinents belonging to him, conform to the faid acts of parliament, and laws and daily practice of Scotland in all points. OUR WILL IS

HEREFORE, and we charge you, that, on fight hereof, ye pass, and in our name and authority SUMMON, WARN, and CHARGE

personally, or at their respective dwelling places, if within Scotland, UPON SIX DAYS warning, and, if furth thereof, by open proclamation at the market cross of Edinburgh, and pier and shore of Leith, ON SIXTY DAYS warning, and the tutors and curators of fuch of them as are minors, if they any have, for their interests, and all others having or pretending to have interest in the said matter, by open proclamation at the market cross of other places needful, TO COMPEAR before the faid Lords of Council and Session, Commissioners appointed for plantation of kirks and valuation of teinds, at Edinburgh, or where they shall day of happen to be for the time, the

next, in the hour of cause, with continuation of days, To ANSWER at the instance of the pursuer in the matter libelled; THAT IS TO SAT, the defenders to hear and see a valuation of the said teinds led and deduced, and a constant yearly duty in place thereof fixed and determined, AND, being so valued, to hear and see themselves decerned to denude of and convey the said teinds to the pursuer in manner before specified, in all points, OR else to allege a reasoned.

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fonable cause on the contrary, WITH certification as effeirs. According to Juskice, as ye will answer to us thereupon; WHICH to do we commit to you jointly and severally our full power, by these our letters, delivering them by you duly executed, and indorsed again to the bearer. Given under our signet at Edinburgh, the day of , and of our reign the thirty-seventh year, 1797.

This fummons passes under the fignet, but this and all other fummonfes before the Commission of teinds, is, by the act 1707, c. 9., ordered to be raifed and fubscribed by the Lord Register and his deputies, though in practice they are figned by the clerk to the Commission of Teinds and his deputies, and by them they are given out blank, that is, without having the libel or narrative filled up; and it feems to be on this account that the conclusions of the fummons are repeated in general terms in the will. In this state, that is, still unfilled up, the fummons, which has been figned by the teind clerk and figneted, is executed against the titular and minister of the parish within which the lands lie, and, when there is a vacancy in the parish, against the moderator of the presbytery, in place of the minister of the parish. Where

the titular is not patron, the summons is also executed against the patron of the parish, and, where the teinds have been let in lease, against the tacksman. Before calling the summons in Court, the libel is prepared by the agent for the pursuer, and is filled up according to the form which I have given.

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The pursuer in this action, as he founds on his titles to the land, ought regularly to produce them, and were the defenders to insist on it, the action could not proceed until they were produced; but in practice no fuch demand is made, When the nor are the titles always produced. cause comes into Court, the pursuer's lawyer states the nature of the action, that it is a process of valuation and sale of lands; and he craves that a proof may be allowed of the annual value of the lands. The Lords " allow a " proof prout de jure, of the just worth and " constant yearly value of the lands libelled, in " flock and teind, parsonage and vicarage, joint-" ly and separately, with the usual deductions; " allow the defenders a conjunct probation, and " grant commission," &c. for taking the proof. When the officers of state for the Crown are parties, their lawyer craves leave to give in interrogatories to be put to the pursuer's witnesses, and to have the same inserted in the act

and commission, which is accordingly allowed by the interlocutor granting the proof.

This proof is usually led in the country, and it is the duty of the man of business in Edinburgh to give such directions as may ensure full information on all the necessary objects of inquiry. With this view, there are certain points proper to be attended to:

- 1. Whether any part of the lands are in the natural possession of the proprietor? and if so, that part will be distinguished from what has been set in lease.
- 2. With regard to lands in the natural posfession of the proprietor, to bring evidence of what would be a just yearly rent of such lands on a nineteen years lease, without any grassum or other consideration paid to the proprietor.
- 3. With regard to the lands let in leafe, to afcertain the rent paid by the tenants, distinguishing the money and victual rent from the kains
 and casualties, and mentioning the value of each
 of these, according to the rate of the country;
 specifying the commencement and endurance of
 the lease, the obligations on either party, and,
 where grassums have been paid, the precise amount of them; or if none have been paid, it
 should be so stated.

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4. For the purpose of pointing out the articles of deduction from the rent of the lands, it should be inquired, 1. Whether the expence of supporting the houses on the farm is to be borne folely by the landlord? Whether there are more houses than are sufficient for the use of the farm, and what is the annual value of fuch as are not required for the farm? Whether any rent is drawn from cot houses, from a fmithy, or from a changehouse? 2. Whether any of the rents arise from orchards, from woods, from moss rights, from the sale of peats, from mills; and in the case of mills, there will be a distinction betwixt that part of the rent arising from the mill land and that arising from the mill itself, whether it be a corn mill, a wauk mill, or any other species of machinery? 3. Whether any part of the rent of the estate arises from the erection of any manufacture, as from a bleachfield, a printfield, or a pottery? or whether it arises from a fishing, or from a ferry boat, or from a quarry, or a coal or marl pit, or from mines? 4. What improvements have been made on the estate, by draining, by embankments, by enclosures; and the expence bestowed on these improvements should be ascertained by the production of accounts, and the evidence of

the workmen employed in making them. The time at which these improvements were made, as well as the rent of the ground previous thereto, ought also to be ascertained. On this head, another object of inquiry is, Whether any lime or marl is delivered by the landlord to the tenant, with the value of it. If any part of the estate have been set in steelbow, the value of the stock ought to be proved.

These points ought to be in the view of the person employed to lead the proof; he ought to have an accurate rental made up, containing the names of the farms, the tenants, and every species of rent, &c. He ought to learn the situation of the land in question, in regard to all those points which I have put down; and having acquired the necessary information, he will frame such questions to be put to the witnesses as may bring out fully the evidence on which the Court will proceed in valuing the teinds.

In leading this proof, another point to be attended to is the separating the value of the lands lying in one parish from the value of the lands lying in another parish; and the questions ought to be so conceived as to bring out clearly this distinction, wherever the estate is situated in more than one parish, and where the farm lies in two parishes, and pays a cumulo rent.

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This proof being led and reported, the term is circumduced, and a prepared state is made up by the teind clerk. Alongst with the state, a scheme is prepared, which gives in figures the refult of the proof, showing the annual amount of the rent, with the articles of deduction, con. fifting of those fums arising from the late improvements on the estate, or of those articles which are not teindable. In this scheme the practice is, where there have been graffums given on entering into the leafe, to add to the rent about 81, or rather I should fay, 81. 58. 5 d. per cent. of the graffum, if the lease be for 19 years; and more or lefs, according as the term of endurance happens to be shorter or longer. Thus, for a leafe of feven years, the annual proportion of graffum will be 17l. 5s. 7 d. per cent., and for a leafe of three times 19 years, it will be 51. 6s. 7 18 d. per cent. of the graffum; and when there are deductions, the articles of deduction appearing in the proof (as for mill rent, &c.), form one branch. 2. There is a deduction made from the rent, of 7½ per cent. of the expence laid out on the improvements which have been made on the estate within the last seven years. 3. When there is lime or marl furnished by the landlord to the tenants, that must fo far diminish the rent; and

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therefore a deduction will be made on that account, according to circumstances. And, lastly, where a farm has been let in steelbow, a deduction of 15 per cent. of the value of the stock will be made from the rent, on account of the stock. These deductions being made, the fifth part of the remainder is taken for teind, and this is found and declared by the Court to be the teinds, parsonage and vicarage of the lands.

This decree valuing the lands is then extracted, as if the action had been for the fole purpose of valuing the teinds. The next step is to call the fummons of new (for it contained the two conclusions of valuation and of sale, merely to fave the expence of a fecond fummons, and of again citing the parties). Alongst with the fummons is produced the extracted decree of valuation, a certificate of the proportion of stipend payable to the minister (given either by the minister or by the teind clerk), and a scheme of the price prepared by the teind clerk. This scheme proceeds on the valuation fixed by the extracted decree; from this is deducted the amount of the stipend payable to the minister, with 6 per cent. of the free teind for the King's annuity, and the price is struck at fix or nine years purchase of the balance, as the defender's

right to the teinds shall happen to be, as titular or as patron only.

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In this action there can be no opposition; for the teinds being valued, every thing follows of course, and the Court "ordain the pursuer to "make payment to the titular (or to the pa" tron), or to such of the defenders as have best right thereto, of the price, with the law-"ful interest thereof from a certain term, and in time coming, until the defender shall de-"liver to the pursuer a sufficient and valid heritable right to the teinds, parsonage, and vicarage of the said lands, and that in lieu of the valued teind aforesaid; and declare the pursuer to have right to his teinds for such a "crop, and in all time to come."

There are still some things that it may be proper for me to mention, in regard to the valuation and sale of teinds. Thus, 1. Where there has been a recent judicial sale of lands, the proof led in that action will be admitted in the process of valuation as evidence of the value of the rent; and therefore, when the cause is called, the pursuer's counsel, in place of craving a new proof, will move the Court to receive the proof led in the judicial sale, and to remit to a Lord Ordinary to prepare the cause.

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2. When teinds are drawn by the titular, a thing that is not now common, it is the real value of the drawn teind one year with another, deducing one fifth for the King's eafe, that is held to be the annual value of the teind; and this value is afcertained in the process of valuation, and the fifth part there deducted: But, as a proof of the real value of drawn teind is a matter of great difficulty, the other mode of procedure will commonly be reforted to. 3. By the acts 1693, c. 17., and 1641, c. 20., the fale ought to be purfued within two years of the valuation; yet, in practice, these statutes have been overlooked, and fales take place on valuations of a much older date, as was found in a late cafe.

It may happen that a proprietor is possessed of a sub-valuation of his teinds, and it will then be his object to obtain an approbation of that subvaluation, as it fixes the value of his teinds at a much lower rate than that at which they would now be valued. This approbation (in the same way with the action of valuation) may be included in the same summons with the action of sale, in this form:

Summons of Approbation and Sale.

GEORGE, &c. WHEREAS, &c. OUR LOVITE B., That he is heritable proprietor of all and whole (Here describe the lands), and stands duly infeft and seised therein, in terms of an instrument of fafine thereof in his favour, dated THAT, by the 30th act of and recorded the parliament 1690, power was given to the Lords and others of the Commission thereby appointed for plantations of kirks and valuation of teinds, to value and cause to be valued the teinds, parsonage and vicarage, great and small, of whatfoever lands within the kingdom liable in payment of teinds, and to approve or difapprove of fubvaluations, and to take all other courses for fettling, valuing, and felling of teinds, conform to the rules laid down in the 19th act of the parliament 1633, and the other acts of parliament therein mentioned, LIKEAS by the 9th act of the parliament of Scotland holden in the 1707, the Lords of our Council and Seffion were empowered, authorifed, and appointed to judge, cognosce, and determine in all actions and causes which were formerly referred and did appertain to the jurifdiction and cognizance of the Commissioners for plantation of kirks

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and valuation of teinds, as fully and freely as our faid Lords do or may do in other civil causes, agreeably to the rules laid down, and the powers granted by the feveral acts of parliament therein recited. AND TRUE IT IS, That the subcommissioners appointed for valuing the stock and teind of the lands within the , by their report, of date presbytery of . FOUND and DECLARED (Here the terms of the report, in fo far as they regard the pursuer's lands, will be taken in), as the principal report of the subcommissioners, in the custody of the clerk of the high commission, will testify: THEREFORE, the report of the subcommissioners above recited ought and should be RATIFIED, APPROVED, and ALLOWED by our faid Lords, in fo far as concerns the valuation of the purfuer's lands above specified, and their decree and authority INTERPONED thereto; AND, in terms thereof, it ought and should be FOUND and DECLARED, that the stock and teinds of the purfuer's faid lands shall be now, and in all time coming, the particular quantities of victual and fums of money contained in the faid report, viz. the rent, stock, and teind of the lands of A. L. , the fifth part whereof being , OUGHT and SHOULD be FOUND and DECLARED to be the teind, parsonage and vicarage of the same (and so of the other lands in the report, if more than one); AND the faid teinds being fo valued, our faid Lords ought and SHOULD MODIFY and DETERMINE the price thereof, according to the respective rights of the faid defenders, AND fuch of them as have right thereto OUGHT and SHOULD be DECERNED and ORDAINED, by decree forefaid, upon payment of fuch price, TO DISPONE the faid teinds to the pursuer and his heirs and affignees, heritably and irredeemably; and, for that end, to grant dispositions containing procuratories of refignation, precept of fasine, clauses of warrandice, in fuch terms as the faid Lords shall determine, and all other necessary writs for that purpose; OR OTHERWISE, in case the said defenders fail or refuse so to do, the teinds, parsonage and vicarage of the faid lands OUGHT and SHOULD be ADJUDG-ED and DECERNED, by decree foresaid, to pertain and belong to the purfuer and his forefaids, heritably and irredeemably, upon payment or confignation of the price put upon them as aforefaid; AND it OUGHT and SHOULD be FOUND and DECLARED, that the pursuer and his heirs or affignees, upon payment or confignation of the price fo to be determined, have good and undoubted right to the whole teinds, both parso-

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nage and vicarage of the faid lands and pertinents belonging to him, conform to the fore-faid acts of parliament, laws and daily practice of Scotland, used and observed in the like cases in all points. Our WILL IS HEREFORE, &c.

The persons to be called in this action are the same as in the action of valuation and sale of teinds.

In this process the subvaluation will be given out with the fummons, or will be referred to in the clerk's hands, if it lie there, in case any appearance has been marked by the defenders; and the only defence that can defeat the action will be founded on the dereliction of the fubvaluation by a contrary use of payment of teind. But, where there is no fuch objection, the mere filence of the pursuer or his authors will afford no defence, and the Court will "ratify, allow, " and approve of the report libelled on, in fo " far as concerns the lands libelled." The fubsequent procedure in extracting this decree of valuation, and in obtaining the decree of fale, will correspond with the proceedings which have been already explained.

It is in conformity with the decree of the commission of teinds that the legal right to teinds is granted; and I now lay before you

the form of a disposition of teinds proceeding upon such a decree.

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Disposition of Teinds in Obedience to a Decree *.

WE John Marquis of Tweeddale, Charles Earl of Selkrig, William Earl of Aberdeen, John Earl of Ruglen, Sir James Hamilton of Rofehall, Mr. James Graham of Airth, &c. and John Hamilton writer to the fignet, COMMISSIONERS appointed by JAMES DUKE of HAMILTON and BRANDON, TITULAR of the TEINDS after difponed, for felling the teinds, parsonage and vicarage, belonging to him within the sheriffdoms of Lanark, Linlithgow, and Stirling, and to grant and fubscribe all manner of dispositions and other conveyances of the faid teinds, heritably and irredeemably, as by law is directed, any three of us being declared to be a quorum, conform to the commission granted to us, of date the first day of December 1733, registered in the books of Council and Session the third day of the faid month, Considering THAT day of B. upon the , obtained a DECREE of VALUATION, at his instance, before the Lords

^{*} I have given this, although not the simple form, as it will sufficiently explain the ordinary style of this deed, as well as the peculiarities that are to be found in it.

of Council and Seffion, Commissioners appointed for plantation of kirks and valuation of teinds. against the said James Duke of Hamilton and Brandon, Mr. Thomas Linning, and Mr. Thomas Wharry, ministers of the gospel at Lesmahago, RATIFTING and APPROVING of the fubvaluation of the parsonage teinds of the lands , and interposing their authority of thereto, converting the price of the victual at the boll, and, at that conversion, FINDING and DECLARING the just worth and constant yearly avail of the parsonage teinds of the said B.'s lands of F. to be L. ; and FINDING and DECLARING the just worth and constant yearly avail of the stock and teind, parsonage and vicarage, of the faid B.'s lands of G. to be in all time , the fifth part whereof, becoming, L. , was thereby declared to be the ing L. teinds, parsonage and vicarage, of the said lands, as the faid decree of valuation more fully bears; AND THAT the faid B., on the , obtained a DECREE of SALE of the faid teinds before the faid Lords, as Commissioners foresaid, against the said James Duke of Hamilton and Brandon, DECERNING and ORDAINING the faid Duke to denude himself, his heirs and fuccessors, of all right, title or interest he had, or anywife could claim or pretend, to

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the teinds, parsonage and vicarage, of the said B.'s lands of F. and G., lying in manner mentioned in the faid decree of valuation, and that in favours of the faid B., his heirs and affignees whomfoever, heritably and irredeemably, for nine years purchase, and to grant and deliver to the faid B. and his forefaids fuch valid and fufficient rights of the faid teinds as best might stand with the law of Scotland; AND DE-CLARING the faid B. to have good and undoubted right to the teinds, parsonage and vicarage of the faid lands, and his entry thereto to be, in virtue of the faid decree of fale, and of the rights and fecurities to be made to him, for crop and year 1735, and fo forth yearly thereafter in all time coming; DECERNING and OR-DAINING, on the other hand, the faid P., on receiving the faid rights, to make payment to the faid noble Duke of the fum of L. being nine years purchase of the teinds, parfonage and vicarage, of the faid lands, after deduction of the stipend presently payable to the minister, and of his Majesty's annuity. AND NOW, SEEING that the faid B. has made payment to me the faid John Hamilton, in name of the faid James Duke of Hamilton and Branas nine years purdon, of the fum of L. , being four-fifths of chase money of L.

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the valued teind duty above mentioned, deducing therefrom fix per cent. as his Majesty's annuity; as also the sum of L. , being twenty years purchase of the remaining fifth part of the annual valued teind duty, after deduction, as faid is, extending both thefe fums fo received to the sum of L., as the price of the teinds, parfonage and vicarage of the haill lands above written, whereof I the faid John Hamilton grant the receipt, and of which we discharge the said B. and his foresaids: THERE-FORE, and in obedience to the faid decree of fale, WE have SOLD and DISPONED, as we do by these presents, in virtue of the powers given us in manner foresaid, SELL, ALIENATE and DIS-PONE from the faid Duke, his heirs and fucceffors whatfomever, to and in favours of the faid B., his heirs and fuccessors in the faid lands, or his affignees whomfoever, heritably and irredeemably, with and under the burdens after mentioned, ALL and WHOLE the TEINDS, parsonage and vicarage of ALL and WHOLE the faid B. his lands and estate of F.; As ALSO, of all and whole the lands of G., lying within the parish of Lesmahago and sheriffdom of Lanark; together with all right, title, interest, claim of right, property and possession, petitory or posfeffory, which I the faid Duke, and his authors

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had, has, or can any way claim or pretend to the teinds, parsonage and vicarage of the faid lands, in all time coming, WITH the BURDEN ALWAYS of all future AUGMENTATIONS to be imposed on the teinds of the faid parish, after the free teinds of the faid parish are fully exhaufted, in manner after mentioned, in proportion with the faid Duke, and the other heritors of the faid parish who have acquired heritable rights to their teinds, as accords of law; AND ALSO, with the burden of his MATESTY'S AN-NUITY: IN WHICH TEINDS, parsonage and vicarage of the lands above mentioned, WE BIND and OBLIGE the faid James Duke of Hamilton and Brandon, his heirs and fucceffors whomfoever, duly to INFEFT and SEISE the faid B. and his foresaids upon their own proper charges and expences, and that by double infeftments and two manners of holding; THE one thereof to be holden of the faid James Duke of Hamilton and Brandon, and his forefaids, in free blench, for the yearly payment of one penny Scots on the ground of the faid lands, at the term of Whitfunday yearly, in name of blench farm, if the fame shall be asked, and relieving him and his foresaids of the duties and services payable therefor to his superiors, AND the other of the said infeftments to be holden from the faid Duke and

his foresaids of his immediate lawful superiors thereof, in the same manner, and as freely in all respects as the said Duke held, or might have held the fame; AND THAT either by refignation or confirmation, or both, the one without prejudice to the other; AND for completing the faid infeftment by RESIGNATION, we do by these presents, as commissioners foresaid. NOMINATE and MPPOINT , jointly and feverally, to be the lawful and irrevocable procurators of the faid Duke, with powers to them to compear before his immediate lawful fuperiors of the faid teinds, or their commissioners in their names, having power to receive relignations, and thereupon to grant new infeftments; AND THERE, with all reverence and humility, purely and fimply by staff and baton, as use is, to RESIGN and SURRENDER, as we by these prefents, as commissioners foresaid, and with and under the burdens before and after mentioned, RESIGN, SURRENDER, UPGIVE, OVERGIVE, and DELIVER, ALL and WHOLE the teinds, parsonage and vicarage, of all and whole the faid B. his faid lands of F. and G., all lying within the parish of Lesmahago and sheriffdom of Lanark, WITH all right, title, interest, claim of right, property and possession, petitory or possessory,

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which the faid Duke has, had, or any ways might have, claim, or pretend to the faid teinds, parsonage and vicarage in time coming, WITH the BURDEN ALWAYS of all future augmentations to be imposed on the teinds of the faid parish. after the present free teinds of the said parish are fully exhausted, in manner after mentioned, in proportion with the faid Duke, and the other heritors in the faid parish, having heritable rights to their teinds, as accords of law; As ALSO with the burden of his Majesty's annuity, IN THE HANDS of the immediate lawful fuperiors of the faid Duke, or of their commissioners foresaid, IN FAVOURS and for new infeftments of the fame, to be granted to the faid B. and his forefaids, heritably and irredeemably, as faid is; BUT always WITH and UNDER the burdens above mentioned, and no other ways, ACTS, inftruments and documents in the premifes, to alk and take, and generally every other thing to do in the premifes which the faid Duke could have done if personally present, or which to the office of procuratory in such cases is known to belong, RATIFYING hereby and CONFIRMING whatever the faid Duke's procurators thall lawfully do or cause to be done in the premises: AND FUR-THER, we hereby MAKE and CONSTITUTE the faid B. and his foresaids the said Duke's lawful

CESSIONERS and ASSIGNEES, in and to the teinds, parsonage and vicarage of the lands above mentioned, and that for crop and year of God 1735, and in all time thereafter, WITH the express BURDEN always of all future augmentations to be imposed on the teinds of the faid parish, after the present free teinds in the parish are fully exhaufted, in manner after mentioned, in proportion with the faid Duke and the other heritors in the faid parish, having heritable right to the teinds, as accords of law; AND ALSO with the BURDEN of his Majesty's annuity; As ALSO IN and To the WRITS and TITLE DEEDS of the faid teinds, conceived in favour of the faid Duke and his foresaids. SURROGATING and SUBSTITUTING the faid B. and his foresaids in the Duke's full right and place of the premises, with full power to him or them to uplift and receive the teinds, parsonage and vicarage above disponed, and generally every other thing anent the premifes to do as freely in all respects as the faid Duke could have done before the granting hereof: WHICH DISPOSITION and ASSIGNATION above written, we BIND and OBLIGE the faid James Duke of Hamilton and Brandon, and his heirs, executors and fucceffors whatfoever, to WAR-RANT to be good, valid, and fufficient to the faid B. and his foresaids, in manner following,

viz. the faid disposition and the assignation to writs, at all hands and against all deadly, in so far as can be extended to the faid fum of , and no farther; AND the faid ASSIGNA-TION to the teind duties, from the faid Duke's facts and deeds done or to be done in prejudice thereof: But IN RESPECT the faid B. has made payment of the price of one fifth of his teinds above mentioned, at the rate of twenty years purchase, THEREFORE WE BIND and OBLIGE the faid James Duke of Hamilton and Brandon. our constituent, and his foresaids, to FREE, RE-LIEFE, and WARRANT the faid B., and the teinds above disponed, against all future augmentations and locality of stipend out of the said teinds, until all the teinds that are now free teinds in the faid parish of Lesmahago, in the hands of the faid Duke, as titular, at the date hereof, be first exhausted; AND for that effect, in case the said Duke shall hereafter dispone the teinds that are now free teinds to the respective heritors of the lands, or any of them, to subject such teinds by proper clauses and provisions to the burden of fuch future augmentations or localities, fo that no part of fuch burdens shall come upon the teinds of the faid B. above disponed, until the teinds now free at the date hereof be first exhausted, as faid is: AND WHEREAS the rights

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and title deeds of the faid teinds contain subjects of greater value, and are not to be delivered up to the faid B., THEREFORE We OBLIGE the faid Duke and his foresaids to make the same FURTHcoming to the faid B. and his forefaids whenever they shall have use therefor, upon their receipt and obligation to redeliver the fame within a reasonable time, and under a suitable penalty; or otherwise, to deliver to them judicial transcripts of the faid writs: AND WE CONSENT to the REGISTRATION hereof in the books of Council and Seffion, or others competent, therein to remain for preservation, and if necessary, that letters of horning, and all other execution necessary may pass hereon, in form as effeirs; and thereto CONSTITUTE OUR PROCURATORS, &c. Further, we, in virtue of our faid powers, do hereby DESIRE and REconjunctly and feve-QUIRE YOU rally, the faid Duke's bailies in that part, hereby specially constituted, THAT on fight hereof ye pass to the ground of the faid lands, and there GIVE and DELIVER to the faid B. or his forefaids, heritable STATE and SASINE, actual, real, and corporal POSSESSION, of ALL and WHOLE the TRINDS, parsonage and vicarage of the lands and others above mentioned, lying and described in manner foresaid, and here held as repeated; AND THAT

by deliverance to him or them, or to his or their certain attorney or attorneys, bearers hereof, of a handful of corn, grass, or stubble, of the ground of the said lands, as use is; But under the conditions abovewritten, AND to be holden in manner foresaid; AND THIS in no ways ye leave undone; for doing whereof this shall be your warrant: In witness whereof, &c.

This deed was ratified by the Duke of Hamilton in these terms:

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Council and Sellion

WE JAMES DUKE OF HAMILTON and BRANDON, DO RATIFY, APPROVE and CONFIRM the foregoing disposition, written on this and the nine preceding pages, granted by our commissioners therein named, to B. and his heirs, &c., of the teinds of his lands therein mentioned: IN WITNESS WHEREOF, &c.

I give this form of a disposition of teinds proceeding on a decree of sale, which differs very immaterially from the voluntary right to teinds. The description of the subject, and the dispositive clause are the same in both; it is in the narrative, and in the clause of warrandice only that any change will take place: a few words will suffice to mark the distinction; and I have

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cla obl only to observe, in regard to the disposition proreeding on a decree of sale, that the terms of the decree will regulate both the narrative of the deed and the terms of the clause of warrandice.

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Voluntary Disposition of Teinds.

The voluntary fale may be made either by a titular to the proprietor, or by a fuperior (who has purchased his teinds from the titular) to his vassal. The following alterations will take place on the form:

I, A. heritable proprietor of the teinds, parsonage and vicarage of the lands and others underwritten, with their pertinents, considering that B. has instantly made payment to me of a certain sum as the agreed price of the said teinds, whereof I grant the receipt, and discharge him for ever, HAVE THEREFORE SOLD and DISPONED, as by these presents I SELL, ALIENATE, and DISPONE, to and in favours of the said B. and his heirs in the lands aftermentioned, or his affignees whomsoever, heritably and irredeemably, ALL and WHOLE the TEINDS, &c. (This clause goes on in the same tyle with the dispositive clause in the preceding form; there is then an obligation to insert the purchaser, to be holden

a me or de me, with a procuratory of refignation. · differing only in respect to the burdens imposed on the purchaser, which will be ascertained by the agreement betwixt the parties, and expressed accordingly; there will then be a clause of warrandice, which may be from fact and deed, or may be absolute, in these terms): And I oblige me and my foresaids to warrant the whole teinds, parsonage and vicarage hereby conveyed, with this present right and disposition thereof, and the infeftments to follow hereupon, to be good and fufficient to the faid B. and his forefaids, at all hands and against all deadly; but that to the extent only of the said sum of L. paid to me as the price of the faid teinds. (Then follows affignation to the teinds and to the title deeds, obligation to make them furthcoming, clause of registration, pec ept of sasine, and testing clause, for which clauses the preceding form is fufficient).

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The fasine which follows on this cannot vary from the common sasine, except in the single article of the symbol, which differs from that by which the tradition of lands is made; and the title is completed either by a public or base holding, precisely in the same way as in the case of the common disposition to land, and therefore requires no further illustration.

4. Disposition to a Patronage.

The rights of patronage are, in some degree, connected with the fubject of the preceding fection. The right of patronage is a right of presenting a minister to a church, and has no necessary connection with a right to lands; in this fituation a disposition would convey the patronage without requiring a fafine to complete the title; but this species of property, although it does not require a fafine, yet admits of one, and the effect of the fafine is to vest the right in the difponee in fuch a manner as to prevent it from being taken out of his perfon in any other way than by a new fafine. There are, therefore, now few instances in which it will be possible to convey a right to a patronage in any other way than by a charter and fafine.

I, A., patron of the parish of L., IN CONSIDERATION of the full price of the patronage herein disponed, paid to me by B., HAVE SOLD and DISPONED, as I hereby SELL, ALIENATE and DISPONE, to and in favours of the said B., his heirs and assignees whomsoever, heritably and irredeemably, ALL and WHOLE the advocation, donation, and right of patronage of the

, lying in the parish and parish church of ; IN WHICH advocation, donation, and right of patronage I BIND and OBLIGE myfelf and my foresaids duly to infeft and seife the faid B. and his foresaids, and that by two separate infeftments and manners of holding; the one to be holden of me and my foresaids in free blench, for payment of a penny Scots money at the term of Whitfunday, yearly, in name of blench farm, within the faid church of if asked allenarly, and relieving me of the duties and fervices payable to my fuperior thereof, AND the other to be holden from me of my immediate lawful fuperiors thereof, in the fame manner, and as freely in all respects as I hold or might hold the fame, and that either by refignation or confirmation, or by both, the one without prejudice of the other: AND THAT the faid infeftment may be expede by refignation, I

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ly and severally, to be my lawful procurators, GIVING and COMMITTING to them full power, warrant and commission, for me and in my name, to appear before my immediate lawful superiors of the said right of patronage, or their commissioners duly authorised to receive resignation, and to grant new infestments thereupon,

hereby constitute and appoint

and there, with all due reverence, by staff and baton, as use is, to RESIGN and SURRENDER, as by these presents I RESIGN, SURRENDER, UP-GIVE, OVERGIVE, and DELIVER, ALL and WHOLE the said advocation, donation, and right of patronage of the said parish and parish church of

, lying as aforesaid, in the hands of my faid fuperiors, or their commissioners foresaid, IN FAVOUR and for new infeftment of the same. to be made and granted to the faid B. and his foresaids, heritably and irredeemably, in such due and competent form as effeirs, ACTS, instruments and documents in the premises, to ask and take, and generally every other thing to do which I could have done before granting hereof, RATIFTING hereby and CONFIRMING whatever my faid procurators shall lawfully do, or cause to be done in the premises, in virtue hereof: WHICH RIGHT OF PATRONAGE, with this disposition, and the infestments to follow hereon, I BIND and OBLIGE me and my foresaids to WARRANT to the faid B. and his forefaids, at all hands and against all deadly, as law will: AND I hereby MAKE and CONSTITUTE the faid B. and his forefaids my lawful cessioners and assignees IN and To the writs and evidents of the faid advocation, donation, and right of patronage, coneeived in favour of me, my predecessors and

authors, in fo far as regards the faid right of pa. tronage; BUT in respect the said title deeds contain other subjects of greater value than that hereby disponed, and are therefore to be retain. ed in my possession, I oblige me and my forefaids to make the fame furthcoming to the faid B. and his forefaids on all necessary occasions. upon his obligation to redeliver the fame within a reasonable time, and under a suitable penalty: AND FURTHER, I SURROGATE and SUBSTITUTE the faid B. and his forefaids in my full right and place of the premises, with full power to him or them to exercise every power in regard to the faid right hitherto competent to me or my authors; WHICH ASSIGNATION I OBLIGE me and my forefaids to WARRANT at all hands and against all deadly, as law will: AND I CONSENT to the registration hereof in the books of Council and Seffion, or other judges books competent, therein to remain for preservation; and that all execution necessary may pass hereon, in form as effeirs; and thereto I constitute

my procurators, &c. And further,

.I hereby DESIRE and REQUIRE you

jointly and feverally, my bailies in that part hereby specially constituted, that on fight hereof ye pass to the said parish church of, and there give and deliver to the said B. and his an fai ag

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foresaids, heritable state and sasine, actual, real and corporal possession, of all and whole the said advocation, donation, and right of patronage of the said parish and parish church of , and that by delivery to him or them, or to his or their certain attorney or attorneys in his or their names, bearers hereof, the keys of the said church, with a Psalm Book, and other symbols usual and necessary; and this in no ways ye leave undone; which to do, I committo you my sull power, by this my precept of sasine directed to you for that effect: In witness whereof, &c.

This deed is completed in the same way, and by the same forms, with the common disposition. The same will differ very immaterially from the common sasine; it will run in these terms:

Instrument of Sasine.

IN THE NAME OF GOD, AMEN. BE IT KNOWN TO ALL MEN by this present public instrument, THAT, upon the day of, in the year of our Lord, and of the reign of our Sovereign Lord George the Third, by the grace of God, King of Great Britain, France and Ire-

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land, Defender of the Faith, the year, in PRESENCE of me notary public and witnesses fubscribing, COMPEARED personally L., as procurator for B., whose power of procuratory was fufficiently known to me the faid notary public, and passed with us and M. bailie in that part specially constituted by the precept of sasine aftermentioned, to the parish church of HAVING and HOLDING in his hands a DISPOSI-TION of the right of patronage of the faid parish and parish church of , MADE and GRANTED by A. of the date underwritten, and containing therein the precept of fasine affer inserted; by which disposition the said A., for the causes therein specified, sold, ALIENATED, and DIS-PONED, TO and IN favour of the faid B., his heirs and affignees, heritably and irredeemably, ALL and WHOLE the advocation, donation, and right of patronage of the parish and parish , lying in the shire of church of As the faid disposition, containing an obligation to infeft a me or de me, procuratory of refignation, clause of absolute warrandice, affignation to the writs and evidents, and to the whole powers and privileges depending on the right of patronage, precept of fafine after inferted, and feveral other clauses, in itself more fully bears: WHICH DISPOSITION, containing the faid

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precept of fasine, the said attorney presented (and fo on in common form, till you come to) GAVE and DELIVERED to the faid B. heritable STATE and SASINE, actual, real, and corporal possession of ALL and WHOLE the said advocation, donation, and right of patronage of the faid parish and parish church of , AND THAT by delivery to the faid attorney of the keys of the faid church, with a pfalm-book, after the form and tenor of the faid disposition and precept of fasine above inserted, therein contained, in all points; WHEREUPON, and upon ALL and SUN-DRY the premises, the said attorney asked and took instruments in the hands of me, notary public subscribing. THESE THINGS were fo done within the faid church of . betwixt the hours of and , of the day, month, year of God, and of the King's reign respectively first above written, before and in presence and witnesses to the premises specially called and required.

5. Disposition of a Fishing.

The right to fishings, by which is meant falmon fishings, is vested in the Crown, and may be separated from the right to the lands

through which the river runs. It carries with it the power of landing the nets, and using the shores for the necessary purposes of the fishing.

This right is conveyed to a subject either by an express, or by an implied right from the Crown; that is, either by a charter vesting the right directly in the individual, as where he receives a charter of the fishing alone, or where the fishing is contained in the dispositive clause of a charter, alongst with the lands: The implied right to this species of property may arise from the general expression cum piscationibus in the crown charter, followed by forty years possession of a salmon fishing. It is the form of the direct original right which I am to lay before you.

When the right to a falmon fishing is to be applied for, it is through the Lords of the Treafury that the application is made. The form will be nearly that of which you have an example in the application for the erection of a borough of barony, in the section of Burgage Holding, in the end of the present volume. The application is returned to the Barons of Exchequer (if it be to be granted), that the Barons may prescribe the form in which it ought to be done, and by them a signature approved of by the Lord Chief Baron is sent up to the

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Lords of the Treasury, by whom it is signed, and then superscribed by his Majesty, and returned here as the warrant for the charter, in common form.

The fignature thus completed will run in the following terms:

GEORGE R. Superscribed by his Majesty. OUR SOVEREIGN LORD, for the favour his Maiefly bears to his well beloved A., with the special advice and consent of M., Esq., Chief Baron of our Court of Exchequer in that part of our Kingdom of Great Britain called Scotland, J., C., D., and E., Efgrs., the other Barons of his Majesty's said Exchequer, ORDAINS a charter to be made and past under the feal appointed by the act of Union to be kept and used in Scotland in place of the great seal formerly used there, GIVING, GRANTING, and DIS-PONING, likeas his Majesty by these presents, with advice and confent forefaid, GIVES, GRANTS, and DISPONES, and for himself and his royal fuccessors perpetually confirms, to the said A. and his heirs and affignees whatfoever, heritably and irredeemably, the right of falmon fishing in the sea (or in the river of M.) adjacent to his lands in the parishes of and county of , with power to the faid

A. and his foresaids (if in a river to erect cruives and dikes, and to use, &c.), to use such boats and nets as they shall think proper for fishing the same, and to restrain all others from fishing within the faid bounds; and his Majesty WILLS and GRANTS, and for himself and his royal succeffors DECERNS and ORDAINS, that a fafine to be by him the faid A, and his foresaids, taken now and in all time to come, on the beach of the faid fishings, by delivery of a net and coble, is and shall be a valid and sufficient sasine of the faid falmon fishing above disponed; WHERE-ANENT his Majesty hath dispensed, and by these presents dispenses for ever, TO BE HOLDEN, the faid falmon filling above disponed, with the privileges aforefaid, by the faid A. and his forefaids, of us and our royal fucceffors, immediate lawful superiors thereof, in blench farm, fee, and heritage for ever, GIVING therefor yearly, the faid A. and his forefaids, to us and our royal fucceffors, the fum of one penny Scots money, at the mansion house of term of Whitfunday yearly, in name of blench . farm, if the same be asked allenarly, and that for all other burden, exaction, question, and secular fervice which can be exacted or demanded for the said salmon fishing any manner of way. Moreover, our Sovereign Lord, with

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special advice and consent foresaid, hereby v-NITES, ERECTS, and INCORPORATES the falmon fishing above disponed, together with all and whole those parts and portions of the lands and barony of belonging to the faid A., being the lot of the faid estate, lying, bounded, and described in a decree of sale of the same. bearing date the , and charter under the great feal, dated , both in his favours, To THE LANDS and BRRONT of A., lying in the parish of , and county of THAT the faid charter be further extended, with all clauses needful, and that precepts be directed hereon. "GIVEN at our Court of St. James's, the 17th September 1794, in the 34th year of our reign.

By his Majesty's command,

W. PITT.

22d Aug. 1794. Revised.

MORNINGTON.

JA. MONTGOMERY,

R. HOPKINS.

This fignature is the warrant of the charter; and the right being thus constituted, is transmitted in common form. It is very feldom that a right of fishing will be given by itself; when it is, the description of the fishing and its boundaries must be accurately attended to, as well as the privilege of using the shores; which, although it would necessarily follow the right of fishing, may yet with propriety be expressed, in order to prevent any after question amongst the parties; and with these peculiarities, and the change in the symbol of possession, there is nothing on which it is necessary to detain you.

6. Dispositions with Real Warrandice.

Real warrandice arises from the act of the law, or from the agreement of parties. We have an inflance of the former in the excambion, and of the latter in the disposition, where warrandice lands are conveyed in security of the principal lands. These forms, as they have thus a natural connection with each other, I have brought together.

I. Excambion,

Excambion is the exchange of one piece of land for another; and our law has annexed to this transaction a real warrandice, unknown to any other.

The effect of this warrandice is, that upon eviction of either subject, the person deprived of his possession has immediate access to his own original property. This is the act of the law

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Itself, although the anxiety of conveyancers has invariably introduced into this deed a clause expressive of the nature of the warrandice; but without any such clause, it would arise from the simple enunciation of the nature of the agreement; and it is effectual equally against purchasers as against the original party and his heirs.

This transaction may be reduced into writing, either in the form of a mutual contract, or by separate dispositions. In the mutual contract, the clauses are more or less run together; but I give you the following form, as suiting better with the nature of the transaction, than when the rights are given in the form of separate dispositions, and where the clauses are expressed in the least complicated form.

Contract of Excambion. .

It is CONTRACTED and AGREED betwixt A., ON the ONE PART, and B. ON the OTHER PART, in manner underwritten: That is to sar, the faid parties confidering that it is for their mutual interest to make an exchange or excambion of the lands and others particularly after described, belonging to them respectively, and having agreed to make such excambion, THEREFORE

the faid A., in implement of his part of the faid agreement, has EXCAMBED, SOLD, and DISPON-ED, as he hereby EXCAMBS, SELLS, ALIENATES and DISPONES, from himself, his heirs and succeffors, to and in favours of the faid B., his heirs and affignees whomfoever, heritably and irredeemably, ALL and WHOLE the lands of be particularly described in the title deeds), 70-GETHER with all right, title, interest, claim of right, property and possession, which he has or can pretend to the faid lands and others above disponed, or to any part or portion thereof, in time coming: IN CONSIDERATION whereof, and in implement of his part of the faid agreement, the faid B. has EXCAMBED, SOLD, ALIENATED and DISPONED, as he hereby EXCAMBS, SELLS, ALIENATES and DISPONES, from himself, his heirs and succesfors, to the faid A., his heirs and affignees whomfoever, heritably and irredeemably, ALL and WHOLE the lands of (to be also described from the titles), TOGETHER with all right, title, interest, claim of right, property and possession, which he has or can pretend to the faid lands and others above disponed, or to any part or portion thereof, in time coming; AND both the faid parties BIND and OBLIGE themselves and their respective heirs and successors, on their mutual expences, to INFEFT and SEISE each other and

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their foresaids, in the lands and others above disponed, respectively, AND THAT by two several infeftments and manners of holding; ONE thereof to be holden of the disponer and his above written, in free blench, for payment of a penny Scots money, upon the ground of the faid lands, at the term of Whitfunday yearly, if asked only, and relieving the disponer and his forefaids of the duties and fervices payable to their funerior, AND the other of these infestments to be holden of the faid A. and B. their respective immediate lawful superiors thereof, by the same tenure, and as freely as they hold their respective properties themselves, AND THAT either by relignation or confirmation, or both, the one without prejudice to the other: AND for completing the faid infeftments by refignation, the faid A. and B. MAKE and CONSTITUTE

jointly and severally, to be their procurators for them, and in their names to RESIGN and SURRENDER, as they hereby interchangeably RESIGN and SURRENDER as follows,
viz. The said A., in the first place, RESIGNS,
SURRENDERS, and OVERGIVES, all and whole the
said lands of and others, as the same are
described in A.'s part of the dispositive clause
hereof, IN the hands of his immediate lawful
superiors, or of their commissioners having

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power to receive refignations, IN FAVOUR and for new infestment of the same, to be MADE, GIVEN, and GRANTED to the faid B. and his foresaids, in due and competent form as effeirs; AS, ON THE OTHER HAND, the faid B. RESIGNS, SURRENDERS, and OVERGIVES, all and whole the lands of , and others foresaid, as the fame are described in B.'s part of the dispositive clause hereof, IN the hands of his immediate lawful superiors thereof, or of their commissioners having power to receive refignations, IN FA-FOUR and for new infeftments of the same, to be MADE, GIVEN, and GRANTED to the faid A. and his foresaids, in due and competent form as effeirs; AND PROVIDING ALWAYS, that, if the property belonging to either of the parties shall, in whole or in part, be evicted, then, and in that case, this contract, and all that may have followed hereon, shall thereby become void and null; AND it shall instantly be competent to the party from whom the lands shall have been so evicted to re-enter into the possession of the lands herein by him conveyed, ACTS, INSTRUMENTS, and DOCUMENTS in the premises to take, and generally every other thing to do which the faid parties might respectively have done, or which to the office of procuratory in fuch cases is known to pertain; all which they respective-

ly promise to hold firm. AND FURTHER, the said A. and B. reciprocally oblige themselves and their foresaids to WARRANT and DEFEND the subjects above described, disponed in manner foresaid, to be good and sufficient at all hands, and against all mortal, as law will, AND to FREE and DISBUR-DEN the same of all feu, blench, and teind duties, cess, ministers stipends, schoolmasters falaries, and all other public burdens due and payable from the faid lands respectively, at and preceding the term of next, being the term at which the entry of the faid parties to the faid lands is declared to commence. As also, the faid parties do hereby respectively MAKE and constitute each other and their forefaids their CESSIONERS and ASSIGNEES, not only IN and To the whole WRITS and EVIDENTS, titles and fecurities of the lands respectively disponed by them, and the whole clauses therein contained, with all that has or may follow thereupon, BUT ALSO IN and TO the RENTS and PROFITS of the faid lands from and after the faid term of entry, and in all time coming, SURROGATING hereby and reciprocally substituting each other in their respective places for ever; WHICH ASSIGNATION above written each of the faid parties hereby BINDS himself to WARRANT to the other and his forefaids as follows, viz. fo far as regards the writs,

at all hands and against all deadly, as law will: and, so far as respects the rents, from fact and deed only. AND the faid parties have DELIVERED to each other the writs and title deeds of the faid lands, agreeably to inventories thereof subscribed by them respectively, as relative hereto. AND the faid A. and B. do hereby CONSENT to the REGISTRATION hereof in the books of Council and Session, or other judges books competent, therein to remain for preservation, or that a decree or decrees may be interponed hereto, that letters of horning on fix days charge, and all other necessary execution, against both or either of the faid parties, may follow thereon in form as effeirs; and thereto they consti-TUTE

faid A. and B. do hereby DESIRE and REQUIRE
you jointly and
feverally their bailies to the effect after specified, hereby specially CONSTITUTED, that, upon sight hereof, ye pass to the ground of the said
lands of and others, as particularly described in the said A.'s part of the dispositive
clause hereof, and there GIVE and DELIVER to
the said B. or his foresaids heritable STATE and
SASINE, real, actual, and corporal POSSESSION of
the said lands and others, AND THAT by deli-

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vering to the said B. and to his foresaids, or to his or their certain attorney or attorneys, in his or their names, bearers hereof, of earth and stone of the ground of the said lands, and all other symbols usual and necessary; As ALSO, that ye pass to the ground of the said lands of

and others, as particularly described in the said B.'s part of the dispositive clause hereof, and there give and deliver to the said A. or to his foresaids, heritable state and sasine, real, actual, and corporal possession of the said lands and others, and that by delivering to the said A. or to his foresaids, or to his or their certain attorney or attorneys, in his or their names, bearers hereof, of earth and stone of the ground of the said lands, and all other symbols usual and necessary; which to do the said A. and B. respectively commit to you, and each of you, sull power, by this precept of sassine specially directed to you for that effect. In witness whereof, &c.

This deed is completed in the common way, and the disponees hold either of each other, or of their respective immediate superiors; and as the forms by which the right is completed in the person of the disponee have been already explained, it is unnecessary to add any thing

further here than simply to remark, that the fasine upon this right (in favour of A. for instance) will be thus expressed:

Safine on the Contract of Excambion.

IN THE NAME OF GOD, AMEN. Be it known to all men by this prefent public instrument, &c. IN PRESENCE of me, notary public, &c. com. PEARED perfonally L., as PROCURATOR or AT-TORNEr for A., whose power of attorney was fufficiently known to me, the faid notary public, and passed with us and M., BAILIE in that part specially constituted in virtue of the precept of fasine after inserted, to the ground of the land aftermentioned, respectively and succesfively, HAVING and HOLDING in his hands a con-TRACT of EXCAMBION entered into betwixt the faid A. and B., of the date underwritten, and containing therein the precept of sasine after inserted, WHEREBY they agreed to exchange and excamb the lands therein particularly described; and in implement of which agreement the faid B. thereby EXCAMBED, SOLD, and DISPONED from him, his heirs and fuccessors, to and in favour of the faid A., his heirs and affignees whomfoever, heritably and irredeemably, ALL and WHOLE the lands of , with all right, title, interef wh lan the is

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rest, claim of right, property and possession which he had or can pretend to the faid lands and others, or to any part or portion thereof, in all time thereafter, PROPIDING, as it is thereby PROPIDED, in the procuratory of refignation therein contained, THAT, in case of eviction of the whole or any part of the lands conveyed on either part, the faid contract shall become void and null, and the party deprived of his possession shall be entitled instantly to enter into possession of the property thereby by him disponed, As the said contract of excambion, containing a reciprocal obligation on the faid parties to infeft each other a me vel de me, procuratory of refignation, clause of abfolute warrandice, affignation to the writs and evidents, and rents and duties of the faid lands, the precept of fasine above mentioned, and herein after inferted, with feveral other clauses, more fully bears; WHICH CONTRACT OF EX-CAMBION, containing the faid precept of fafine, the faid attorney PRESENTED to the faid bailie, &c. (In common form, the whole precept of sasine, both what relates to the lands in which infeftment is to be given, as well as those disponed by A. to B., will be inserted. In short, the whole precept verbatim must enter the instrument of safine).

2. Disposition with Real Warrandice.

This disposition differs in nothing from the common disposition, but in the addition of the conveyance of the warrandice lands; in all other particulars it corresponds with the common disposition.

Disposition.

I. A., Esq., heritable proprietor of the lands and others after disponed, IN CONSIDERATION of a fum of money paid to me by B., as the price of the faid subjects, of which price I hereby grant the receipt, and discharge him for ever, HAVE SOLD and DISPONED, as I hereby SELL, ALIENATE, and DISPONE, from me, my heirs and fuccessors, To and IN FAVOUR of the said B., his heirs and affignees whomfoever, heritably and irredeemably, ALL and WHOLE the lands of , lying in the parish of fhire of , AND THAT as PRINCIPAL; AND ALSO, ALL and WHOLE the lands of lying in the parish of and shire of , and that IN SPECIAL and REAL WARRANDICE of the principal lands hereby disponed; so THAT, if be e and imr

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the faid principal lands, or any part thereof, shall be evicted from the faid B. or his foresaids, THEN. and in that case, the said B. shall have free and immediate access to the said warrandice lands themselves, at least to as much thereof as shall correspond in quantity and quality to the ground evicted, from thenceforth to be peaceably enjoyed and possessed by them until they shall be fully and quietly repossessed of the said principal lands which may have been evicted as faid is *; together with all right, title, interest, claim of right, property, and possession, which I, my predecessors or authors, heirs and successors, had, have, or anywise may have, claim, or pretend to the principal lands above disponed in all time coming; IN WHICH LANDS and others forefaid, both principal and warrandice, I BIND and o-BLIGE me and my forefaids TO INFEFT and SEISE the faid B. and his forefaids, upon their

^{*} This is the explanation which is generally added to the conveyance of warrandice lands; and as the intention of the deed is to give a real fecurity, in place of the personal security of the common clause of warrandice, it is submitted whether it should not be expressed in this manner: "So THAT if the said principal lands, "&c. shall be evicted from the said B. and his foresaids on any ground which, under the common clause of absolute warrandice, "would infer recourse, then, &c."

I may observe, too, that this clause is sometimes so expressed as to make it guard against all acts of molestation, as well as of actual eviction.

own expence, by two feveral infeftments and manners of holding, one thereof to be holden of me and my foresaids, in free blench, for payment of a penny Scots in name of blench duty, at Whitfunday yearly, if asked only, and relieving me and my heirs of the duties and fervices payable to our superiors thereof; AND the other of the faid infeftments to be holden from me and my foresaids, of and under our immediate lawful superiors, in the same manner that I or my authors hold or might have holden the same ourselves, AND THAT either by refignation or confirmation, or both, the one without prejudice to the other; AND, for completing the faid infeftment by refignation, I hereby MAKE and CONSTITUTE

jointly and se-verally to be my lawful and irrevocable procurators, for me and in my name to appear before my immediate lawful superiors of the lands and others foresaid, or before their commissioners having power to receive resignations, and thereupon to grant new infestments, and there duly and lawfully, by staff and baton, as use is, to RESIGN and SURRENDER, say I by these presents RESIGN, SURRENDER, simpliciter upgive, over give, and deliver, all and whole the said lands of and others above described, and

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that as PRINCIPAL; AND ALSO the faid lands of and others above described, AND THAT in SPECIAL and REAL WARRANDICE of the faid principal lands, in manner and to the extent above expressed, with all right, title, interest, claim of right, property and possession which I, my predeceffors and authors, heirs and fucceffors, had, have, or can pretend to the faid principal lands, IN THE HANDS of my faid fuperiors, or of their faid commissioners, IN FAVOUR and for new infeftments of the same, &c.; WHICH LANDS and others above disponed, both principal and warrandice lands, with this difpofition thereto, and the infeftments to follow hereon, I BIND and OBLIGE me and my heirs, executors and fucceffors, without prejudice to the obligation of real warrandice above written, TO WARRANT to the faid B. and his foresaids to be free from all burdens and encumbrances, and grounds of eviction whatever, at all hands, and against all mortal. AND I ALSO BIND and OBLIGE me and my foresaids to FREE and RE-LIEVE the faid B. and his foresaids of the cess, &c. The rest of the deed is in common form; and, in the precept of sasine, the bailie is required " TO GIVE and DELIVER to the faid B. or his forefaids heritable STATE and SASINE, real, actual, and corporal possession of ALL and WHOLE the said

lands of and others foresaid, AND THAT as PRINCIPAL; and also of ALL and WHOLE the said other lands of , AND THAT in SPECIAL and REAL WARRANDICE of the said principal lands, in manner and to the extent foresaid, AND THAT by delivering to the said B. or to his foresaids, or to his or their certain attorney or attorneys, in his or their names, bearers hereof, of earth and stone of the grounds of the said lands respectively and successively, and all other symbols usual and necessary." &c.

Instrument of Safine on the Disposition.

In the instrument of saline following on this disposition, you will narrate the warrant in this manner:

"HAVING and HOLDING in his hands the principal DISPOSITION, of the date underwritten, containing the precept of fasine after inserted, made and granted by A., heritable proprietor of the lands and others therein and after described, to and in favour of the said B., WHEREBT the said A., for the causes therein specified, SOLD, ALIENATED, and DISPONED, to and in favour of the said B., and his heirs and assignees whomsoever,

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heritably and irredeemably, ALL and WHOLE the lands of , lying in the parish of and shire of , AND THAT as principal; AND ALSO, ALL and WHOLE the lands of , lying in the parish of . , AND THAT in special and and shire of real warrandice of the principal lands hereby disponed; so THAT if the said principal lands, or any part thereof, shall be evicted from the faid B. or his foresaids, THEN, and in that case, the said B. shall have free and immediate access to the faid warrandice lands themselves, at least to as much thereof as shall correspond in quantity and quality to the ground evicted, from thenceforth to be peaceably enjoyed and possessed by them until they shall be fully and quietly repossessed of the faid principal lands which may have been evicted as faid is; together with all right, &c., As the faid disposition, containing an obligation to infeft a me vel de me, procuratory of refignation, &c., more fully bears," &c. (The method of giving safine will be thus expressed): " AFTER READING and PUB-LISHING of which disposition and precept of fasine therein contained and above inserted, the faid bailie, by virtue thereof, and of the office of bailiary thereby committed to him, GAVE

and DELIVERED to the faid B. heritable STATE and SASINE, actual, real, and corporal possession of ALL and WHOLE the lands of and others foresaid, AND THAT as principal; AND ALSO, of ALL and WHOLE the said lands of and others foresaid, AND THAT in special and real warrandice of the said principal lands, in manner above written, AND THAT by delivery to the said procurator of earth and stone of the grounds of the said respective lands, and of all other usual and necessary symbols," &c. (in common form).

Of Burgage Subjects.

The deeds by which burgage property is conveyed are of a peculiar form, and appear to have suffered less change than any other of our deeds. Hence, although they are not of much practical importance, the peculiarities which are to be discovered in them may serve to throw light on other forms, and thus give them a greater claim to your attention than otherwise they would have been entitled to.

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Connected with this subject is that species of right by which the Crown creates a borough of barony; and although the property of the borough is not held in burgage by the inhabitants, yet has the original right such an affinity to the subject of this chapter, that I shall take it up here.

1. Of Royal Boroughs.

And, while it is evident, that the more vir

We are not to conceive that all the landed property of a royal borough is necessarily burgage property. It will consist of what has been granted by his Majesty to the borough, to be held in burgage, or of what the borough may have acquired by purchase, and which latter property they will hold by the same tenure, and precisely in the same manner, that any other proprietor would have held it.

The property vested in the borough by the Crown may have been given out to the burgesses, to be held in burgage; or, it may have been given out in seu; or set in lease; or reserved as a common property for the use of the burgesses; while that purchased by the borough cannot be converted into burgage, but must be held by the same tenure, and in the

fame way as if it had been purchased by any other proprietor. Thus, you will observe, that the only property which can be carried by the deeds that I am to lay before you in this section, is that portion of the land granted by his Majesty to the borough, which has been given out to the burgesses to be held in burgage.

And, while it is evident, that the mere circumstance of a subject being the property of a royal borough will not render it a burgage Subject, I must observe, that even the circumstance of its being locally situated within the territory of the borough will not have this effect. Accordingly, Erskine, in treating of this fubject, mentions several instances of property held in feu being included within the territory of royal boroughs, and still retaining their original holding; and we have a late instance of the fame in the new extended royalty of Edinburgh, where, although the property over which the royalty has been extended belongs to the town itself, the holding remains unaffected by the extension.

The property descending from the Crown is vested in the borough by a charter, without even the necessity of a sasine. The reddendo of this charter is watching and warding, or, in

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general terms, "fervices used and wont;" and the tenure is considered to be of a military nature. This charter does not require to be renewed, because, the vassal being a community, the see is ever full; consequently there was no room for the casualties of ward or marriage while these existed, as there is none now for those of non-entry and relief.

It is this charter which forms the connection betwixt the community and the Crown; but, besides this general charter, there are the deeds on which stand the rights of individual burgesses. These come from the magistrates, not in the character of superiors, but as his Majessy's commissioners. You are not, therefore, to consider the magistrates as holding of the Crown, and the burgesses of the magistrates; for, while the community holds burgage of his Majesty by the original and common charter of the burgh, each proprietor of burgage property equally holds of his Majesty by his own private title deeds.

These private titles, according to the generally received opinion, slowed originally from the magistrates of the borough, as administrators of the common property. The borough laws, collected in the twelfth century, show us that burgage property was then transferred by

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refignation, made in the hands of the magistrates; and that it was in presence of the bailie and of the burgesses, or in the court of the borough, that a sale was regularly to be made*; and the presumption hence arising seems to be strengthened by the nature of the royal gifts in savour of the boroughs. The oldest charter of this kind is one by William the Lyon, granted about the beginning of the 13th century, in savour of the borough of Ayr †. This charter, after granting to the borough and burgesses of Ayr all the

* See the Burrow Laws, c. 117. c. 127. and c. 114.

+ The charter to the borough of Ayr is in these terms: Willielmus Dei gratia, Rex Scotorum, episcopis, abbatibus, comitibus, baronibus, justiciariis, vicecomitibus præpositis ministris et omnibus probis hominibus totius terræ fuæ clericis et laicis, falutem: Sciant presentes et futuri me ad novum castellum meum super Are burgum fecisse, et eidem burgo et burgensibus meis in eo manentibus, omnes libertates et omnes liberas confuetudines concelfisse quas alii burgi mei et mei burgenses in eisdem manentes per regnum meum habent; affedi etiam in eo quolibet die Sabbati dum fori concessi etiam burgensibus qui illuc venerint ad burgum meum inhabitandum, et ibi fedentes et manentes erunt, ut quieti fint a tolneo et omni alia consuetudine per totam terram meam de dominicis catallis suis: Prohibeo itaque firmiter, ne quis in regno meo ab aliquo illorum tolneum aut aliquam aliam confuetudinem de dominicis cattallis suis exigat super meam plenariam forisfacturam: Concessi etiam eidem burgo meo et burgensibus meis qui in burgo illo sedentes et manentes erunt quinque nummatas terræ quæ pertinent ad villam de Are per divisas inferius scriptas, scilicet de Inverdon sursum usque in Innerpolecurteran, et de Innerpolecurteran sursum usque ad Crottun, et sie per Curectan usque ad caput Curcetan, et sie a capite

rights and privileges possessed by the other royal boroughs within the kingdom, and granting to them a certain quantity of lands, has this clause:

- " Concessi etiam burgensibus meis ibidem ma-
- " nentibus, ut cum quolibet plænario tofto fuo,
- " habeant sex agras terræ quas de Boscho ex-

Curcetan ascendendo per Boghiskin usque ad Monedamdereg, et sic a Monedamdereg per ficum ufque in Polecleuan, et fic per Polecleuan usque in Lochfergus, et a Lochfergus descendendo usque in Doufhat, et a Doufhat descendendo per sicum usque ad rivulum ex orientali parte Drumnesaneill, et a rivulo Drumnesaneill descedendo usque in ficum ex occidentali parte rivuli illius, et fic per ficum illum ufque in Polecloncoranguli, et sic per Polecloncoranguli usque in Douffloch, et inde usque in Pollemulin, et sie per Pollemulin descendendo usque in Are, et sic per Are descendendo usque in mare. Concessi etiam burgensibus meis ibidem manentibus ut cum quolibet plænario tofto fuo, habeant fex acras terræ quas de Boscho exterpaverint infra prædictas quinque nummatas terræ, ad faciendum inde commodum fuum. Reddendo annuatim mihi pro quolibet tofto et sex acris terræ illi adjacentibus XII. denarios: Mandavi itaque, et firmiter precipio, ut omnes homines qui cum mercantiis suis ad vendendum et emendum ad illum prædictum burgum meum venerint, firmam pacem meam habeant, et forum exerceant, et in bene et pace redeant. Precipio etiam firmiter, ut apud Mach, et Kairnbucht, et Loudun, et Crossanctoun, et Lachcalpine tolneum et aliæ consuetudines que burgo debentur, dentur et recipiantur. Prohibeo itaque firmiter, ne quis tolneum aut aliquam aliam consuetudinem quas prædicto burgo meo de ratione facere debet, ultra prædictas divisas asportare presumat, super meam plenariam foris facturam. Si quis vero tolneum vel aliquam aliam confuetudinem prædicti burgi mei ultra prædictas divifas asportare presumpserit, precipio firmiter ut omnes homines infra predictas divifas manentes fint auxiliantes fervientibus meis ad adquirendum jus meum, et ad capiendum et attachiandum illum qui tolnea aut aliquam aliam con-

" terpaverint infra prædictas quinque numma-" tas terræ, ad faciendum inde commodum fu-" um." Now, although each burgess was entitled to a certain quantity of this land, which had been conveyed to the borough, yet the allotting of that land to the individual burgeffes, as well as the administration of what should remain unoccupied, must have been vested in the community, and confequently in the magistrates chosen by that community (Bur. Laws, c. 77.) Whether this was a community in Mr. Wight's sense of the word (B. I. c. 2. § 1. p. 36.), it were very idle here to inquire: All that I mean to represent to you is, that it was through the hands of the magistrates that the rights of the individual burgeffes to borough property originally came, and this corresponds with the ideas entertained by the judges in deciding the case of Deans (Fac. Col. Vol. I. No. 22.); for there the question was, Whether magistrates had a power to feu out the property of the borough? And the Court found that they pof-

fuetudinem ad prædictum burgum meum pertinentem ultra prædictas divifas afportaverit vel afportare contenderet. Testibus Florentio, electo Glasguen. Cancellario meo Waltero et Will°. Capellanis meis, Philippo de Valen. Camerario meo, Roberto de Lundon, silio meo, Will. de Bosch et Hugone, Clericis meis, Will° de Valin, Thoma de Colvil, Reginaldo de Crawfurd, apud Lanarc, XXI. die Maij.

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fessed that power, on this reasoning, That, as originally the magistrates were entitled to give out the property of the borough to be held in burgage, the same right of administration which authorised that act ought to enable them to grant seus.

We may therefore presume, that it was from the magistrates that the individual titles originally came. Still in the transmission of these we perceive the fame notions prevail which at one period prevailed in regard to the disposal of every species of heritable property. It was only in the case of mister and poverty (as our old law expresses it), that property derived from an ancestor was allowed to be fold, and the sale was authorifed only on condition that certain forms were observed; and these forms were calculated for the benefit of those next in succession, and for enabling them to acquire the property (Bur. Laws, c. 127.). Lands which had been purchased by the proprietor were not fubject to the fame regulations, and the whole of the fystem must have gradually given way as the state of fociety altered.

The form by which property was thus tranfmitted is prescribed by c. 56. of the Burrow Laws, which declares, "That when any man "fells his lands, or any part or portion thereof,

" he quha fells shall stand within the house, " and come furth of it, and the other, quha " buys, shall stand without it, and shall enter " into it, and the ane shall give to the provost " ane penny for his paffing furth, and the other " shall give ane penny for his entry and sa-" fine." At this time, it is probable, that there was no writing in evidence of the fale. And c. 114. of the Burrow Laws declares, " That an fasine given within borough, in pre-" fence of honest neighbours, suppose it is not " given within court, is good and fufficient;" from which it would appear that the presence of the burgesses in court, or even of the neighbours, was equivalent to the presence of the pares curiæ, which we learn from Craig, was the only evidence of the transmission of landed property in this country at a much later period.

This ceremony of leaving the property void for the purchaser to enter, and his entering and taking possession, joined to the want of a written title, has induced Mr. Wight to remark, that, in the transmission of burgage property, "the nice feudal forms were not observed." Yet the want of a written title seems to have been a want which burgage property must have felt at that time in common with most of the

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other property in the kingdom; and this form of giving possession, so far from being inconsistent with nice feudal forms, seems to be the most ancient in Europe, and appears in the Burrow Laws rather as the preservation of old forms, than as the introduction of new ones, since it is not only the form of the Roman law, but that of the deeds of the seventh and eighth centuries *.

But this form of transference had degenerated, and, in place of a public transmission of property, a private one was introduced, which was the occasion of much fraud. This we learn from the act 1567, c. 27., which declares, "That for sa meikle as the great hurt done of before within burgh, be giving of sasines pri"vately, without any bailie and an common

^{*} Amongst the Formula Veteres preserved alongst with the Styles of Marculfus, you have the sasine of those days, of which I subjoin an example. "Notitia traditionalis qualiter et quibus præ"fentibus venit homo aliquis nomine ille, ad illum mansum
"quem ante hos dies, per chartulam venditionis ad filium suum
"adsirmavit per herbam et terram visus suit tradidisse vel consig"nasse et exitum inde secisse his præsentibus." The observation
made by Bignonius, the commentator on these forms, is in these
words: "Exitum fecisse. In signum scilicet traditionis exibat,
"loco cedebat vacuamque possessionem in alterum transferebat:
"Alias tamen exutum scriptum est, ut sit sensus, eum possessione
"se exuisse, ut alius ea vestiretur, si sæculi verbis uti licet utrum"mque retineri potest."

" clerk of burgh, wherethro' our Sovereign "Lord's leidges may be defrauded greatly," therefore it is statuted and ordained, "That na "fasine be given within burgh, of any manner of land or tenement within the same, in ony time coming, but be ane of the bailies of the burgh, and common clerk thereof; and gif ony sasine be otherwise given here after, to be null and of none avail." The effect of this act has been, from the date of its enactment, to render every transmission of burgage property null that has not been given by a magistrate, and to which the town clerk has not acted as notary.

With regard to the form of the disposition of burgage property, it contains, in place of the obligation on the seller to insest the purchaser a se vel de se, simply an obligation to insest him to be holden burgage. There is not even a precept of sasine to enable the purchaser to enter by confirmation; it is by resignation alone, in the hands of the magistrates, as his Majesty's commissioners, that the title can be completed. This peculiarity in the form of the disposition is entitled to our attention.

We should naturally conceive the entry by confirmation to be as familiar in burgage holding as in any other; for certainly there seems no bui val wh

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no reason why a vassal of the Crown holding burgage should not, as well as any other Crown vassal, give a charter with a precept of fasine, which might be the subject of confirmation; yet fo it is, that, in burgage holding, there is no vestige of such a deed, while it is common to every other holding. How shall we account for this? Is it not that refignation is the natural and original means of divefting a vaffal? That it was by refignation in the hands of the magistrates, and in the presence of the burgeffes, that all transmission of burgage property of old took place; that it was contrary to the interest of those concerned to admit of any subinfeudation; and hence that the statute of Robert the First, by which subinfeudations were prohibited, was unnecessary in regard to burgage property, and indeed never was meant to apply to the transmission of it. The terms of the statute seem to support this in the clearest manner. It proceeds on this narrative *: " For " as meikle as divers and fundry men, be buy-" ing of lands and tenements pertaining to " knights and other lords, to their great hurt " and prejudice in time bygune, hes entered " the famine, the quhilkis lands were fauld " and analied be the tenants and freehalders of

^{* 2}d Stat. of Robert I. c. 24.

"the faidis knights and others, great men and lords, to be halden as of their fee of themselves and their heirs, and not of the said knights or lords, being overlords of the analiers, makers of the said alienation and infestment, whereby the said overlords did tyne and amitt the marriages, escheits, and wards quilk did sall and pertain to them of their tenandries." This surely is directed to a very different object than the transmission of burgage subjects; to subjects held by a different tenure, and with different casualties from those known in burgage holding.

If, then, the statute of Robert the First did not and could not apply to the transmission of burgage property, and if, in the deeds relative to that species of property, there be no entry by confirmation, while, in all the other kinds of property to which the statute did apply, this mode of entry be common, does it not add a strong presumption in favour of the opinion, that the entry by confirmation owed its origin to this statute?

But, to proceed, there is this further peculiarity in burgage titles, that, in the renewal of the investiture in favour of a purchaser or heir, neither non-entry nor relief duties are demandable by the magistrates. This follows as in rat

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in this holding; for, as that valial is the corporation, which, never dying, can require no renewal of the original charter, there are neither non-entry nor relief duties due to his Majesty, who is the superior not only of the corporation, but of the individual burgesses; and these not being due to his Majesty, cannot be demanded by the magistrates, who act merely as the King's commissioners in receiving resignation, and giving renewals of the private tights of the burgesses; rights subordinate to the common and general title of the corporation, and of use only in distinguishing the private property of the burgesses.

Another peculiarity occurs in what is called the fasine, though it is a deed very different from the common sasine, of which there is no instance in burgage holding, as there is no precept of sasine in the disposition to a purchaser. This sasine is an attestation by a notary of possession being given, but it is never a simple deed; for, when a right is received, it must be either to an heir, and then there is substantially a junction of the precept of clare constat with the sasine; or it must be to a disponee, and then, as it proceeds on a resignation made in the hands of the

magistrates, the deed partakes of the nature both of the resignation and sasine.

There is still one peculiarity more; it is in the recording of the fafine; for, fo careful had the town clerks been at the time that the records were established, in the 1617, that there was an express exception, declaring, that the act should not extend to "instruments of sasine, &c. " given by provofts and bailies of free burghs " royal, of lands lying within their liberties " and freedoms holden by the faid burghs in " free burgage of his Majestie." But the bad tendency of this was foon felt; and we learn from the observations of M'Kenzie on this statute, that the danger arifing from the omissions which fometimes happen were first attempted to be remedied by an act of federunt 22d February 1681, and more completely by the act 1681, c. 11., which, in the same way with the act 1617, requires the registration of the sasines, " of fubjects holding burgage," within fixty days from their date, in books to be kept by the town clerk, under certification of nullity in all queflions with those acquiring a perfect and lawful right to the lands.

Having mentioned those things in which the titles of burgage property differ from the common deeds by which landed property is transfer bel inv

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ferred, I shall now lay the forms of these deeds before you, beginning with the renewal of the investiture in the person of an heir, as the nearest approach to the original charter.

This deed is termed an instrument of cognition and fasine; and it appears from the form of the deed, that there had been originally a claim made by the heir, a proof taken by the magistrate, and a cognition of the claimant as heir to his predecessor; and this may still be the practice in some royal boroughs, but, in the city of Edinburgh, no evidence is reforted to. The last fasine is given in to the town clerk, with a note of the relationship of the person to be infeft, and, without any examination of witnesses, or the slightest proof of connection, a deed in the following terms is got back from the town clerk, who trusts to the falvo jure cujustibet of the deed for faving the interest of any person that may be found to have a preferable right.

Instrument of Cognition and Sasine.

IN THE NAME OF GOD, AMEN. BE IT KNOWN TO ALL MEN, by this present public instrument, THAT, upon the day of, and

of the reign of our Sovereign Lord George the Third, by the Grace of God King of Great Britain, France, and Ireland, Defender of the Faith, the year, IN PRESENCE of me, notary public and common clerk of the borough of

and of the witnesses after named, subferibing, compeared personally on the ground of the subjects after mentioned J. O. writer in Edinburgh, as procurator and attorney for A. B., eldest lawful son of L. B., whose power of attorney was fufficiently known to me, the faid notary public; AND ALSO COMPEARED an honourable man, T. W., Efq., one of the prefent bailies of the faid borough of Edinburgh; AND THEN AND THERE the faid bailie, by virtue of his office, cognosced and ENTER-ED the faid A. B., eldest son of the deceased L. B., as nearest and lawful heir to the said L. B., his father, in ALL and WHOLE (Here the Subjects are fully described); AND IMMEDIATE LY thereafter the faid bailie GAVE and DELIVERS ED to the faid A. B., heir foresaid, heritable STATE and SASINE, actual, real, and corporal poffion of all and whole the faid lodging and cellar, with the pertinents thereto belonging, lying, bounded, and described as aforesaid, and that by delivery of earth and stone of the ground of the faid tenement, and hasp and staple thereof,

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to the faid J. O., as procurator and attorney foresaid, after the manner and custom of entering and infefting the heirs of the proprietors of tenements within the borough to the inheritance of their ancestors, in all points, falvo jura cujuslibet. WHEREUPON, and upon ALL and sun-DRY the premises, the said J. O., as procurator and attorney foresaid, ASKED and TOOK inftruments in the hands of me, the faid notary public fubscribing. THESE things were fo done on the ground of the faid subjects, between the hours of and , of the day, month, year of God, and King's reign respectively first above written, BEFORE and IN PREand , witnesses to SENCE of the premises specially called and required, and hereto with me fubscribing.

This instrument is authenticated by the long notorial doquet of the town clerk, and by the subscription of the witnesses, and is completed by entering (within fixty days of its date) the register of the borough, established by the act 1681, c. 11., for burgage subjects, in place of the ordinary register of tasines.

This, as I have already observed, is the modern style of the instrument of cognition in the city of Edinburgh. But the old one bears more

evident marks of a regular service; for a claim was made, a proof taken, and the claimant cognosced to be heir to his predecessor. The old form bore: "Which instrument of sasine the faid procurator exhibited to the faid bailie. humbly requiring him to cognosce the faid A. B., eldest lawful son of the said L. B., his father, conform to the use and custom of the burgh observed in the like cases, and thereafter to enter and infeft him in the faid tenement and others, as heir foresaid: Which request the faid bailie finding to be just and reasonable, he received the faid instrument of fasine into his hands, and delivered the fame to me, notary public, to be read and published to the witnesses present; which I having done, the said bailie, after taking a proof of the faid A. B.'s propinquity by the witnesses subscribing, did, by virtue of his office of bailiary in the faid borough, cognosce," &c. This was in fact a fervice; there was a claim, evidence of the propinquity was produced, and, by the fentence of a judge, the claimant was found to be heir; and it is a fervice exceedingly well calculated for that species of property which was to be earried by it, and which is often of very trifling value. In Edinburgh, where the practice has been given up, no cognition takes place in favour

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of an heir of provision; it is given only in the character of son or other relation of the deceased, consequently, in every case of a claim made by one who is heir under a settlement, he must produce a service under his proper character before he can receive his cognition and sasine in a burgage subject: and the effect of this is not only to deprive heirs of provision in burgage property of a cheap and easy mode of entry, but, I should much fear, of creating great irregularity in the method of completing the title.

The property being in this manner vested in the heir, I shall suppose him to have fold the subject. The disposition will be in these terms:

I, A. B., heritable proprietor of the subjects after specified, IN CONSIDERATION of the sum of paid to me by C. D., as the agreed price of the subjects after disponed, have sold and DISPONED, as I hereby SELL, ALIENATE, and DISPONE, to and in favour of the said C. D., his heirs or assignees whomsoever, heritably and irredeemably, ALL and WHOLE that dwelling house (Here the subject is described as in the former title deeds), together with all right, title, and interest, claim of right, property and possession, petitory or possessor, which

I, my predecessors or authors, had, have, or anywise may have, claim, or pretend thereto, in all time coming: AND I BIND and OBLIGE me, my heirs and successors, to insest and seise, upon their own proper expence, the said C. D. or his foresaids, in the house, cellar, and pertinents above disponed, TO BE HOLDEN of his Majesty in free burgage, for services of borough used and wont; AND, for completing that insestment, I MAKE and CONSTITUTE

, and each of them, jointly and feverally my lawful and irrevocable procurators, for me and in my name TO RESIGN, likeas I hereby RESIGN, SURRENDER, UPGIVE, OVER-GIVE, and DELIVER, ALL and WHOLE the faid lodging or dwelling house, with the cellar and pertinents above difponed, all lying, bounded, and described in manner foresaid; together with all right, title, interest, claim of right, property or possession, which I, my authors and predecessors had, have, or otherwise can have thereto, IN the hands of the Lord Provost or any one of the bailies of the borough of Edinburgh for the time, as in the hands of his Majesty, immediate lawful fuperior thereof, IN FAVOUR and for new infeftment of the same, to be made, given and granted to the faid C. D. and his foresaids, heritably and irredeemably, in due and competent form

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as effeirs, acts, instruments, and documents in the premises, to call for and receive, and generally to do every other thing in relation thereto that I could have done myself if personally prefent, or which to the office of procuratory in fuch cases pertains; all which I oblige me to hold firm, and without revocation: WHICH lodging, cellar, and pertinents, with this prefent disposition thereof, and infestment to follow hereon, I BIND and OBLIGE me, my heirs, executors, and fucceffors, to warrant to the faid C. D. and his foresaids at all hands and against all deadly as law will, and to free and relieve him and them of all stent, annuity, ground annual, and other public burdens due and payable furth of the premifes, preceding the term , which is hereby declared to have been the time of his entry thereto, and of the cess payable on or before the 25th day of March last; the faid C. D. and his foresaids being always obliged to free and relieve me and my foresaids of the public burdens and cess in all time thereafter. AND I hereby ASSIGN and MAKE OVER TO and IN FAVOUR of the faid C. D. and his forefaids, not only the rents of the faid lodging and cellar from the faid term of , and in all time thereafter, BUT

ALSO the whole writs, evidents, rights, titles,

and fecurities of the faid subject conceived in my favour, or in favour of my predecessors or authors, with the whole clauses, tenor, and contents thereof, and all that has or is competent to follow thereon; WHICH ASSIGNATION I BIND and OBLIGE me and my foresaids to WAR-RANT, as to the rents, from fact and deed only, and, as to the writs, at all hands and against all deadly, as law will; AND I have herewith delivered up to the faid C. D. the title deeds of the faid subjects, agreeably to an inventory thereof, figned by me, of this date, as relative hereto, all to be kept and used by the said C. D. and his foreiaids as their own proper evidents in all time coming. AND, lastly, I con-SENT to the registration hereof in the books of Council and Seffion, or others competent, therein to remain for preservation, and that all execution necessary may pass hereon in form as effeirs; and for that purpose constitute

my procura-

tors, &c. IN WITNESS WHEREOF, &c.

This is, properly speaking, the only deed in the transference of burgage property with which the conveyancer has any concern, as the other deeds are the operation of the town clerks; and I shall here mention such changes in the for

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form as are most commonly to be met with in this deed.

1. In burgage subjects, it is very common to take the right to husband and wife in conjunct fee and liferent, and to the children in fee; consequently the disposition is often granted by those having this interest in the subject, as well as to such disponees. I shall therefore give so much of the form as will be necessary to explain the change which this occasions in the disposition.

I, A. B., fon of the deceased L. M., heritable proprietor of the subjects after specified, and I, O. P., widow of the said deceased L. M., liferentrix of the said subjects, in consideration, &c., do hereby, for our respective rights of see and liferent, sell, alienate, and dispone, to and in favour of C. D., and E. F. his spouse, in conjunct see and liferent, for her liferent use allenarly, and in implement to her in so far of the provisions made in her savour by her said husband, and to G. D., their son; whom sailing, to the said C. D., his heirs or assignees whomsoever, in see, heritably and irredeemably, all and whole, &c. (The obligation to inset is thus expressed): And we bind and

OBLIGE us, our heirs and fuccesfors, for our respective interests in the said subjects, to infest and feife, on their own proper expence, the faid C. D. and E. F. and the faid G. D., according to their respective rights of see and liferent as above expressed, in the house, cellar, and pertinents above disponed. (In other parts of the deed, as in the procuratory of refignation, and in the affignation to the rents and title deeds, the difponees will be mentioned in the fame terms; but, in fuch a deed, there is often a clause inserted for the purpose of preserving the husband's power over the estate; it comes in in the close of the dispositive clause, in such terms as these): BUT RESERVING ALWAYS power to the faid C. D. by himself, without consent of his said spouse, or of the faid G. D., to fell and dispose of the foresaid house and cellar, with the pertinents, or to contract debt thereon, or to exercise any other act of administration as fully and freely in all respects as if no interest whatever had been hereby conveyed to the faid E. F. or G. D.

2. When the disponer is not inseft, if he be an heir, he will give a warrant for obtaining himself inseft, and then a procuratory for resigning in savour of the purchaser. Thus:

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IN WHICH LODGING, cellar and pertinents, I BIND and OBLIGE me, on my own expence, to procure myself duly and lawfully entered and inseft; and, being so entered, I OBLIGE myself and my foresaids to inseft and seise the said C. D. and his foresaids, on their own expence, in the said subjects, TO BE HOLDEN of his Majesty in free burgage, for services of borough used and wont: AND, for obtaining me inseft in the said subjects, and completing the said insestment in savour of the said C. D. and his abovewritten, I hereby MAKE and CONSTITUTE

feverally my procurators, to procure me infeft and seised in the said lodging, cellar, and pertinents, by service, retour, and cognition, or in any other way necessary; and my title to the said subjects being established, I hereby authorise my said procurators, for me and in my name, to resign, as I hereby, then as now, and now as then, resign, surrender, upgive, overgive, and deliver, all and whole, &c. (The rest of the style is in common form).

3. When the granter of the disposition is himself a disponee uninfest, the deed will, in the obligation to infest, run in these terms:

I, A. B., deriving right to the subjects aftermentioned from R. S., heritable proprietor thereof, IN CONSIDERATION, &c. IN WHICH LODG. ING or dwelling house, and garret above disponed, I BIND and oblige me and my forefaids to infeft and seise the said C. D. and his abovewritten, on their own expence, TO BE HOLDEN of his Majesty and of his royal successors in free burgage, for fervice of borough used and wont, and that by refignation; AND, for completing that infeftment, I do hereby Assign and MAKE OVER to the faid C. D. and his forefaids, the whole title deeds of the faid subjects, with the whole clauses, tenor, and contents thereof, and all that has, or is competent to follow thereupon, and in particular (without prejudice to the faid generality) a disposition, of date granted to me by W. Y., with the unexecuted procuratory of refignation therein contained (or, if the granter has himself right by disposition and affignation, fay), " and in particular, without prejudice to the faid generality, a disposition by to W. Y., of date

the unexecuted procuratory of refignation therein contained, to which I have right by disposition and affignation from the said W. Y., of
date
," with full power to the said C. D.
or his foresaids, in virtue thereof, to procure

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of the themselves insert in the said subjects as fully and freely as I might have done myself before granting hereof. AND I DO hereby further ASSIGN and MAKE OVER to the said C. D. the rents, &c. in common form.

4. It happens, in the transmission of subjects situated within the city of Edinburgh, that they are often insured in the Edinburgh Friendly Insurance Office, which has the effect of rendering the purchaser a partner of that insurance company, and consequently of entitling him to the dividends which may fall due on the stock corresponding to the subject conveyed. The change which this will occasion in the deed, will occur in the assignation to the rents, which will be thus expressed:

AND I hereby Assign and MAKE OVER to and in favours of the faid C. D. and his forefaids, NOT ONLY the writs and title deeds of the faid subjects, in their whole heads, tenor, and contents, with all that has or is competent to follow thereon, BUT ALSO the rents of the faid lodging and cellar from and after the said term of which is hereby declared to be the term of his entry thereto, with the certificate of insurance of the said property in favours

Insurance Company against Losses by Fire, of date the , and all benefit that may arise from the said insurance, from and after the said term of , with power to the said C. D. and his foresaids to receive and discharge the rents hereby assigned, and dividends payable by the said Edinburgh Friendly Insurance Company, surrogating and substituting the said C. D. and his foresaids in my full right and place of the premises for ever; which assignation I bind and oblige me to warrant as follows, &c.

5. The premium of insurance in the Edinburgh Friendly Insurance Company, and which forms the stock of that company, and entitles the insured to a dividend, has not perhaps been paid up, and, by act of parliament, it is declared to be a preferable burden on the subject. Where this is the case, it will be proper to add the sollowing provision to the assignation:

" Providing Alwars that the faid C. D. and his forefaids, by accepting hereof, are bound to relieve me and my forefaids of the fum of L. Sterling, and of the interest which shall fall due from and after his faid term of

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To TH entry, being the premium of insurance due to the said company."

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These observations comprehend the changes which are peculiar to this disposition; and although what remains be properly the province of the town clerk, I shall lay before you the forms of those deeds by which the disposition is completed.

Instrument of Sasine.

The instrument of sasine in the transmission of burgage subjects partakes, as I have already observed, more of the nature of the instrument of resignation than of sasine; and I shall give the example of this deed in the different circumstances that most commonly occur; and, first, where the disposition comes from a person insest, and contains a warrant of insestment, it will run in these terms:

IN THE NAME OF GOD, AMEN. BE IT KNOWN TO ALL MEN, by this present public instrument, THAT, upon the day of years, and

of the reign of our Sovereign Lord George the Third, by the Grace of God King of Great Britain, France, and Ireland, Defender of the Faith, the base year, IN PRESENCE of me, notary public and common clerk of the borough of , and of the witnesses subfcribing, COMPEARED personally on the ground of the subjects after mentioned J. O. writer in Edinburgh, as procurator and attorney for and in name of A. B., by virtue of a procuratory of refignation contained in a disposition after mentioned, whose power of procuratory was fufficiently known to me, the faid notary public, and passed with an honourable man, T. W., Esq., one of the present bailies of the said borough of to the ground of the tenement of houses and others after mentioned; AND THEN AND THERE the faid procurator, with all due reverence, and by staff and baton, as use is, RESIGNED and SURRENDERED ALL and WHOLE (Here the subjects are described as in the disposition), IN THE HANDS of the said bailie, as in the hands of his Majesty, immediate lawful fuperior thereof, IN FAVOUR and for new infeftment of the same, to be given and granted to C. D. in due and competent form, and that by virtue of, and conform to a procuratory of refignation contained in, a disposition grant-

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ed by the faid A. B. to the faid C. D., of date the day of , as by the faid difposition, produced and publicly read by me, the faid notary public, to the bailie and others prefent, did clearly appear; which refignation fo made was received by the faid bailie, who, by virtue of his office, and at the defire of the faid procurator, GAVE, GRANTED BACK, and DELI-VERED to the faid C. D. heritable STATE and SASINE, actual, real, and corporal possession of ALL and WHOLE the lodging and cellar as above described, AND. THAT by delivery to the said procurator of earth and stone of the ground of the faid lands, and hasp and staple of the faid tenement of houses, after the form and tenor of the faid disposition, and custom of the borough in all points. WHEREUPON, and upon ALL and SUNDRY the premises, the said procurator ASK-ED and TOOK instruments in the hands of me, the faid notary public fubscribing. THESE THINGS were fo done upon the ground of the faid fubjects, between the hours of and , of the day, month, year of God, and King's reign respectively first above written, BEFORE and IN PRESENCE of and witnesses to the premises specially called and required, and hereto with me fubscribing. This fasine is attested by the notary's long doquet, in which he adds to his designation clerk of the borough in which the subject is situated, and it is attested in the common way by the subscription of the witnesses. It then, within sixty days of its date, must enter the record kept by the town clerk, and this completes the title of the purchaser.

Where the disposition does not contain a procuratory of relignation, but assigns an unexecuted procuratory contained in a former difposition, you will say, " IN FAVOUR and for new infeftment of the same, to be given and granted to C. D. in due and competent form, and that in virtue of a procuratory of refignation contained in a disposition made and granted by the faid W. Y. to A. B., of date the , to which disposition and unexecuted procuratory therein contained the faid C. D. has right by disposition and affignation in his favours, granted by the faid A. B., of date , as from both of the faid dispositions, produced to and publicly read by me, the faid notary public, to the faid bailie and others, did clearly appear," &c.

Where the disposition has been granted by an heir unentered, it becomes necessary not only to

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give infeftment to the purchaser, but previously to complete the title of the seller; and it is done, however incongruous it may appear, in one and the same deed. It is called a cognition and sasine, and is in these terms:

IN THE NAME OF GOD, AMEN. KNOW ALL MEN by this present public instrument, that upon the day of , &c. IN PRESENCE of me

notary public, city clerk of Edinburgh, and witnesses subscribing, compeared personally on the ground of the subjects hereaster described, an honourable man, A. B. Esq., one of the present bailies of the said city; and then and there the said bailie, by virtue of his office, cognosced and entered C. D. as nearest and lawful heir to the said deceased E. D. his father, in all and whole that lodging or dwelling house, &c. wherein the said E. D. stood infest, conform to his instrument of sasne under the hand of

, dated , AND GAVE and DELIVERED to the faid C. D. as heir forefaid, heritable state and fasine, actual, real, and corporal possession, of ALL and WHOLE the foresaid lodging or dwelling house, &c., all lying, &c, AND THAT by delivery of earth and some of the ground of the said subjects, and hasps and staples thereof, to J. O. writer in Edinburgh, as attorney for

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of entering and infefting the heirs of the proprietors of tenements within borough, to the inheritance of their ancestors, in all points, salvo jurce cujustibet: And immediately thereaster, and in presence of me the said notary public and of the said bailie and witnesses, compeared on the ground of the said subjects, the said J. O. as procurator and attorney for and in name of the said C. D., by virtue of a procuratory of resignation contained in a disposition of the said lodging or dwelling house, with the cellars, garrets, and pertinents thereto belonging, dated

the reasons and causes therein expressed, to and in favours of F. G., and his heirs and assignees whomsoever, heritably and irredeemably, as from the said DISPOSITION produced to and publicly read by me the said notary to the said bailie and witnesses, upon the ground foresaid, did clearly appear and was evident; AND THEN AND THERE the said J. O., as attorney for the said C. D., with all due reverence, and by staff and baton, as use is, RESIGNED and SURRENDERED all and whole the lodging or dwelling house, &c., lying, bounded, and described in manner foresaid, IN THE HANDS of the said bailie, in savour and for new infestments of the

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fame, to be made, given and granted to the faid F. G., and that in manner underwritten; WHICH RESIGNATION, fo duly and lawfully made, was admitted of and received by the faid bailie, who by virtue of his office, and at defire of the faid procurator refigner, GAVE and DE-LIVERED to the faid F. G. heritable state and fafine, actual, real, and corporal possession, of ALL and WHOLE the foresaid lodging or dwelling house, &c., AND THAT by DELIVERY of earth and stone of the ground of the same to the said J. O., as attorney also for and in his name, after the form and tenor of the faid disposition granted by the faid C. D. to the faid F. G., and procuratory of refignation therein contained, in all points. Whereupon, and upon all and fundry the premises, the said J. O., as attorney foresaid, asked and required instruments, one or more, under the hand of me the faid notary public fubscribing. THESE THINGS were so feverally faid and done upon the ground of the foresaid subjects, after the hour of , and before the hour of , of the day of the month, in the year of God, and of the King's reign respectively first above written, in presence of and . , witnesses to the premises specially called and required.

If the deceased was possessed of an unexecuted procuratory, then his heir, in place of being cognosced (which can take place only when the deceased has been insest in a burgage subject), must complete his title to the unexecuted procuratory by a service, and convey it to the purchaser, who will then be insest in common form.

2. Borough of Barony.

The power of creating a borough of barony is vested in the Crown; and previous to the Rebellion in the 1745, many erections of this kind had taken place; amongst these some were entirely dependent on the original proprietor of the ground, in whose favour the grant had been made; their magistrates were named by the Baron, and he possessed great power and influence in the borough, while other boroughs were unsubjected to any such controul, were possessed of the power of electing their own magistrates, and held the management of their own funds.

It was this distinction betwixt the dependent and independent boroughs which induced the leg rit th ve tu ju ba

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legislature, in framing the act abolishing the heritable jurisdictions of this country, to enact that all jurisdictions, powers and authorities vested in regalities, bailiaries, &c. should in future be exercised by those judges to whom such jurisdiction would have belonged, had such bailiaries, &c. never been erected; at the same time that an exception was made in favour of such "borough of regality or of barony, or to "the magistrates of any such boroughs respectively, which are independent of the Lord of "regality or Baron respectively."

It is evident from this act, that it was not meant to circumscribe the power of the Crown, when that power could be exercised with safety; much less when it might be exercised beneficially for the public; and accordingly all those boroughs of barony which had been so constituted as to be in no danger of becoming the tools of the great proprietors, were preserved; and consequently the power of the Crown to make similar erections in suture, ought not to have been doubted. It happened, however, that for upwards of twenty years from the date of the act, no such creation took place; and the charter in favour of the late Lord Gardenstone, erecting the village of Laurencekirk into a bo-

rough of barony, was the first erection that was made.

As there had then been no late application of that nature, the competency of it, as well as the proper form of such a grant, was considered by the Barons of Exchequer, and by the Crown Lawyers, and the form of it settled. This grant is obtained by presenting a petition to the Lords of the Treasury, in the form which I am immediately to lay before you, and which will be signed by the person in whose favour the grant is to be made.

To the Right Honourable the Lords Commissioners of his Majesty's Treasury;

THE PETITION OF W. D. Esq.

HUMBLY SHEWETH,

THAT your petitioner stands heritably infest and seised, in virtue of a charter from the Crown, in ALL and WHOLE the BARONT of C. D., comprehending therein the town and lands of with the mill and mill lands, multures, sucken, and knaveship of the same; the town and lands of , with the pertinents of the said lands,

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THAT as the petitioner has established the village of C. on the said lands, at a considerable expence, for the purpose of giving encouragement to trade, manufactures, and industry; and as it might enable him more effectually to accomplish these purposes, if the said village, now to be called C. D., were with some territory around it erected into a borough of barony; he is therefore desirous to resign the whole of his property, with the said village of C., in the hands of his Majesty, in order to procure a charter of NOVODAMUS of the said lands, and ALSO UNITING and ERECTING his whole subjects into a BARONT, to be called the barony of

, and likewise of ERECTING the said village of C., as far as already built or shall hereafter be built upon the said lands, into a FREE BOROUGH of BARONY, with all the liberties and privileges belonging to any borough of barony by the laws of Scotland, CONSTITUTING and ORDAINING the same to be the head borough of the said BOROUGH of C. D.; THE said charter containing at the same time all the legal and usual powers of administration competent to the petitioner by such erection; and particularly a power to the petitioner of granting charters to

the inhabitants and community of the faid borough, regulating and administering the administration and police in whatever manner he shall think proper, consistently with the laws of Scotland.

THAT as a weekly market is much wanted in that part of the country, the petitioner humbly proposes, that power and liberty be given to him and his heirs and successors, of HOLDING and APPOINTING a WEEKLY MARKET within the said borough of C. D., upon such day of the month as shall be thought most convenient.

THAT the petitioner is also desirous that the faid charter shall contain the PRIVILEGE of TWO ANNUAL FAIRS, for black cattle, horses, sheep, cloth, and merchant goods, to be held upon any part of the said barony, for three days successively, commencing upon any day which shall be appointed and thought most proper by your Lordships or the Barons of his Majesty's Court of Exchequer in Scotland, from the first of February till the first of October, WITH all the tolls, customs, and powers competent by such grants.

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MAT IT THEREFORE PLEASE your Lordships to appoint a fignature to be prepared, containing a novodamus of the said lands,

and uniting and erecting the faid whole lands and others before specified, into a borough, to be called the Borough of C. D., with the usual privileges; AND ALSO erecting the faid village of C. into a free borough of barony, AND DECLARING the same to be the head borough of the said borough of C. D., containing the usual powers and privileges before mentioned, WITH a grant of a weekly market and two annual sairs, customs and privileges thereof as aforesaid, OR so to do therein as your Lordships shall see proper.

And your petitioner shall ever pray,
W. D.

This application is transmitted to a solicitor in London, who presents it to the Treasury Board, by whom it is sent down to the Barons of Exchequer, with directions to "Report to "the Lords Commissioners of the Treasury "their opinion of what may be proper to be done." The Barons, in consequence of this remit, order a signature to be prepared, in this form:

GEORGE R. [Superscribed by bis Majesty. OUR SOVEREIGN LORD, with the special advice and consent of JAMES MONTGOMERY of Stan. hope, Efg. Lord Chief Baron of his Majesty's Court of Exchequer, in that part of Great Britain called Scotland, FLETCHER NORTON, Efq., SIR JOHN DALRYMPLE HAMILTON M'GILL, Baronet, Cosmo Gordon, and ARCHIBALD COCKBURN, Esquires, remanent Barons of his Majesty's said Court of Exchequer, ORDAINS a charter to be made and paffed under the feal appointed by the treaty of Union to be kept and used in Scotland, in place of the great seal formerly used there, GIVING, GRANTING, and DISPONING, and for his Majesty and his royal fuccesfors perpetually CONFIRMING; LIKEAS his Majesty, with the special advice and confent forefaid, by these presents GIVES, GRANTS, and DISPONES, and for himself and his royal succesfors perpetually confirms, to his Majesty's Lo-VITE W. D. of C. D., Esq., and his heirs and affignees whomfoever, heritably and irredeemably, ALL and WHOLE the lands and barony of C. D. &c.; which lands of C. D. and others, with the pertinents, pertained heritably of hefore to the faid W. D., and were, with all right, title and interest which he had, or anywise

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might have, claim, or pretend, by his lawful procurators in his name, to that effect specially constituted, in virtue of the procuratory of refignation aftermentioned, duly and lawfully RE-SIGNED at Edinburgh, on the day of IN THE HANDS of the faid James Montgomery, Efg., Lord Chief Baron, for himself, and in name and behalf of the remanent Barons of the faid Court of Exchequer, as in the hands of his Majesty, immediate lawful superior thereof, IN FAVOUR and for new infeftments of the same, to be made and granted to the faid W. D. and his foresaids, in due and competent form, AND THAT conform to and in virtue of a procuratory of refignation granted by the faid W. D. in favour of himself and his foresaids, dated the day of , AS AUTHENTIC INSTRUMENTS taken upon the faid refignation, IN THE HANDS of at more length bear: AND MOREOVER, in corroboration of the faid charter, and infeftment to follow hereon, his Majesty, with advice and confent foresaid, HAS of NEW GIVEN, GRANT-ED, and DISPONED, and for himself and his royal fuccessors perpetually CONFIRMED, LIKE-As his Majesty, by these presents, of new GIVES, GRANTS, and DISPONES, and for himself and his 10yal fuccessors perpetually confirms, To and IN FAVOUR of the faid W. D. and his heirs and

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affignees whomfoever, heritably and irredeemably, ALL and WHOLE the foresaid lands of C.; together also with the village of C., built upon the faid lands, and herein after erected into a borough of barony; BUT RESERVING entire to the INHABITANTS of the faid BOROUGH and COM-MUNITY thereof, the rights, jurisdictions, and privileges conferred upon them by virtue and in consequence of the said erection herein contained; AND DECLARING the fame to be independent of and unaffected by this present grant, made in favour of the faid W. D. and his forefaids, except in fo far as herein specially referved: As ALSO, his Majesty of NEW GIVES, GRANTS, and DISPONES, and for his Majesty and his royal fuccessors perpetually confirms, TO and IN FAVOUR of the faid W. D. and his forefaids, heritably and irredeemably, all right, title and interest, claim of right, property and posfession, as well petitory as possessory, which his Majesty or his royal progenitors or fuccessors had, have, or anywise can have, claim, or pretend to the faid whole lands, teinds, and others above disponed, with the pertinents, or any part or parts thereof, rents, farms, kains, customs, casualties, profits and duties of the same, for all years bypast, for whatever cause, preceding the ly above specified, with the pertinents, from

date of these presents; RENOUNCING and TRANS-FERRING the same, with all action, suit, and execution competent, or which may anywife be competent to his Majesty and his royal succeffors thereupon, To and IN FAVOUR of the faid W. D. and his foresaids, now and in all time coming; with which generality, and all other exceptions, nullities and imperfections, which might be moved or objected against the same, his Majesty has DISPENSED, and for himself and his royal fuccessors, and all his subjects, by these presents, now and for ever DISPENSES. AND FURTHER, CONSIDERING that the faid W. D. has erected a village on the forefaid lands, for the purpose of encouraging industry and promoting manufactures; and that, for the advancement of these good purposes, he is willing and defirous that the faid village of C., fo far as already built, or as shall hereafter be built within the particular bounds and limits after specified, should be ERECTED into a free and independent borough of barony, THEREFORE, his Majesty, with the special advice and consent foresaid, has DISPONED and DISUNITED, and for himself and his royal successors, by these presents DISPONES and DISUNITES the whole lands, teinds, mills, mill-lands, and other heritages particularly above specified, with the pertinents, from all

baronies or regalities whereof the fame may here. tofore have been a part or parts, and CREATES. UNITES, ERECTS, ANNEXES, and INCORPORATES the whole forefaid lands, teinds, mills, mills, lands, and other heritages, with the pertinents particularly before specified and described, in-TO ONE WHOLE and FREE BARONY, to be called the BARONY OF C. D. ; AND GIVES, GRANTS, and commers to the faid W.D. and his forefaids, under the exception and refervation afterwritten, dfulld POWER, LIBERTY, and PRI-VILEGE and JURISDICTION OF FREE BARONY within the bounds of the faid lands, AND PAR-TICULARLY full power to him and his forefaids to CHOOSE, MAKE CREATED and CONSTITUTE bailies and other officers of a baron court, who shall have power to hold baron courts, and exercife fuch jurifdiction as by law is competent: BUT EXCEPTING ALWAYS from the barony hereby erected, the territory after described of the borough of C., erected into a free and independent borough of barony in manner afterwritten, and now and in all time coming to be called the borough of C. D., as aftermentioned, OVER WHICH the powers, privileges, and jurifdiction of free barony granted to the faid W. D. and his foresaids, over the other lands and fubjects hereby disponed, shall nowise EXTEND.

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af ju in AND his Majesty, with special advice and confent foresaid, HATH ERECTED, and by these prefents ERECTS, the said village of C., so far as already built, or shall hereaster be built upon the said lands above disponed, within the special bounds and limits after described, viz. within one mile three surlongs, or 2420 yards on each side of the military road, or King's highway, which at present forms the street of the said village, and runs nearly south-west and north-east from the line which bounds the lands before disponed, belonging to the said W. D., from the lands of the belonging to the said with the lands of the said which which sounds the lands of the said which the lands of the said which so the lands of the said which the sa

bounds the said lands from the lands of helonging to note to a control of the south-east, and extending in breadth 272 yards on each side of the said street or highway, which is hereby declared to be the territory of the borough of barrony aftermentioned, Berond which the rights, jurisdiction, and privileges conferred on the inhabitants and community thereof, shall not extend into one whole free and independent Borough of Barony, to be called the borough of barony of C. D., now and in all time hereafter, with all powers, liberties, privileges, and jurisdictions whatsoever pertaining and belonging, or which ought to pertain and belong to

any free and independent borough of barony which may be erected in Scotland fince the date of the act of parliament made in the 20th year of the reign of his late Majesty George the Second, ENTITLED " An act for taking away and " abolishing the heritable jurisdictions in that " part of Great Britain called Scotland," &c.; WITH FULL POWER and PRIVILEGE to the burgeffes of the faid borough to elect their own magistrates and counsellors, for the exercise of fuch jurisdiction as by law is competent to such magistrates, and for the due and regular administration of such common good as may pertain and belong to the faid community in all time coming. AND, for the better regulating the administration and police of the faid borough of barony, IT is hereby DECLARED, that the MAGISTRACY shall consist of one bailie, who shall have the legal and usual jurisdiction; THAT the administration of any common good which shall belong to the borough shall be committed to fix counsellors jointly with the said bailie, any three of them, with the faid bailie, to be a quorum, WITH FULL POWER to the faid bailie and counsellors, and their quorum, to choose a clerk, and to make fuch byelaws and regulations as are confistent with the public law of the realm, and as may be conducive to the establishment and

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preservation of good order, and to the advancement and prosperity of the faid borough: THAT all the inhabitants within the territory of the borough before described, being of lawful age, and having a perpetual right by feu, or a leafe for one hundred years to a piece of ground within the limits of the faid borough as above described, and on which a house or houses shall be erected, shall have the right of burgesses, and be entitled to vote at the elections, and to be elected to the offices of magistrate or counfellors; BUT under the following provisions, viz. That no person shall be entitled to vote at elections, or to be chosen as a bailie, though having right as aforefaid, who is not a refident burgess: THAT the first election shall be on the first Tuesday in the month of September next, and every future election shall be triennial, the hour of meeting being eleven forenoon. AND his Majesty, with special advice and consent forefaid, gives full power and liberty to the faid borough of barony, and to the administrators of the faid community, of KEEPING and HOLDING one WEEKLY MARKET within the faid borough, on Tuesday of each week, As ALSO OF HOLDING TWO free ANNUAL FAIRS on any part within the territory of the faid borough of

barony, the one of faid fairs to commence on the third Tuesday of May, and the other to commence on the fecond Tuefday of August, yearly, and each of faid fairs to continue for the space of four days; WITH POWER to the faid magistrate and counsellors, and their fucceffors in office, to collect, levy, and intromit with fuch tolls and customs of the faid weekly markets and free fairs as can be legally exacted. AND TO APPLY the same for the necessary expences of maintaining peace and good order during the faid markets and fairs, OR otherwise for the good and benefit of the community: RESERVING ALWAYS to the faid W. D. and his foresaids the right of superiority of the ground already feued, and the property and fuperiority of the ground not yet feued, within the limits of the faid borough of barony, with full power to grant feus, and to enter and receive vasfals, and for these ends, to grant, subscribe, and deliver charters, feu rights, precepts of clare constat, and all other writings necessary, either as original rights or in renovation of former investitures, notwithstanding of the present erection, which is intended for the establishment of magistrates to regulate the police, administration, and good government of the inhabitants of the faid borough,

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and of the common good, as hereby granted, without prejudice to the rights and interests of the faid W. D., as his foresaids so reserved. AND FURTHER, his Majesty, with special advice and confent foresaid, WILLS and GRANTS, and for himfelf and his royal fuccessors by these presents DECERNS and ORDAINS, that a sasine or fafines, to be taken now and in all time coming by the faid W. D. or his foresaids, at or upon the ground of any other part or portion of the faid lands, by delivery of earth and stone of the ground thereof allenarly, without the necessity of any other fymbol, are and shall be as valid and effectual fasines of and for the whole lands, barony rents, mills, mill-lands, fishings, borough of barony, and other heritages above disponed, with the pertinents, or of and for fuch parts and portions thereof for which fasines shall be so taken, as if a sasine were taken on each particular part and pertinent thereof by delivery of the ordinary and usual fymbols; AND THAT, notwithstanding the fame may lie discontiguous or in different jurisdictions, be under different denominations, and require more fasines and various symbols, WITH REGARD to which, and all exceptions, defects, nullities, and imperfections which might be moved or objected against the validity, effi-

cacy, and legality of fuch fafines, his Majesty, with special advice and consent foresaid, HAS DISPENSED, and for himself and his royal fucceffors by these presents now and for ever DIS-PENSES, TO BE HOLDEN and TO HOLD, the faid lands, baronies, mills, fishings, teinds, and others, with the pertinents thereof, by the faid W. D. and his foresaids, of his Majesty and his royal fucceffors, immediate lawful fuperiors thereof, in feufarm, free blench fee, and heritage for ever, by all the righteous meiths thereof, old and divided, as they lie in length and breadth, and PATING therefor yearly to his Majefty and his royal fucceffors the fums following, viz. For the faid whole lands and barony of C. the fum of one penny Scots money at the term of Whitfunday yearly, on the ground of the faid lands, in name of blench farm, if asked only, and that in name of taxes, ward, relief, and marriage duties formerly due out of the same, according to our act of parliament made in the 20th year of George the Second, for changing the tenure of ward, and converting the fame into blench and feu holding, &c., AND THAT for all other burden or fecular fervice which can be required or demanded out of the foresaid lands, teinds, or others, or any part or portion thereof; and, for the faid lands

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of , the fum of pounds Scots money, at two terms in the year, Whitfunday and Martinmas, by equal portions, in name of feufarm, and the heirs of the faid W. D. doubling the faid feufarm duty for the first year of the entry of every heir to the fame, as use is in feufarm, and these for all other burden, exaction, question, demand, or fecular service whatever, which can anywife be exacted or required for or furth of the faid whole lands, baronies, mills, mill-lands, teinds, boroughs of barony, fishings, and other heritages above disponed, with the pertinents, by any person or persons whatever in all time coming. AND his Majesty ORDAINS the faid charter to be executed in ample form, with all proper and necessary clauses. GIVEN at our Court of St. James's, the 13th day of December 1791, in the 31st year of our reign.

By his Majesty's command,

* JA. MONTGOMERY.

FLR. NORTON.

J. DALRYMPLE.

COSMO GORDON.

AR. COCKBURN.

W. PITT.

MORNINGTON.

R. HOPKINS.

^{*} Marked on the back of the signature, " Revised 29th June " 1791.

[&]quot; AR. COCKBURN."

Edinburgh, 3d February 1792. Presented to the Right Honourable the Lord Chief Baron, and Barons of his Majesty's Court of Exchequer in Scotland.

JAMES BAIRD, D. P.

Exchequer, 11th April 1792. Recorded in the register of signatures.

JAMES BAIRD,
For the Remembrancer.

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This fignature (which I have given with all its markings after it has become a complete warrant for a charter), is revised by one of the Barons of Exchequer in Scotland, and then transmitted to the Lords of the Treasury, and having obtained their sanction, is signed by them, and afterwards superscribed by his Majesty. It is then returned to the Court of Exchequer, and resignation being made on a procuratory of resignation executed by the vassal (which has nothing in it peculiar), the signature is subscribed by the Barons, and becomes a warrant for the precept under the signet, which, as well as every subsequent step, takes place in common form.

The right thus vested in the Crown vassal passes by the usual forms, and the charter will

be renewed to an heir or to a purchaser, in the same way with the title of any other estate holden of the Crown, while the base rights in savour of the vassals in the borough of barony have nothing peculiar to them, nothing in their constitution or transmission which can distinguish them from other seu rights, and the sa-sines proceeding on them enter the common register of sasines, that is, either the general register or particular register for the district.

Thus have I completed the examples I mean to give of the disposition to a purchaser.

END OF THE FIRST VOLUME.

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